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F. A. Hayek on the role of reason in human affairs

Linda Catherine Raeder

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F. A. HAYEK ON THE ROLE OF REASON IN HUMAN AFFAIRS

by

Linda Catherine Raeder

Submitted to the Graduate Faculty of the University of Richmond
in Candidacy for the Degree of M.A. in Political Science
August 1993

Thesis Director: Dr. Ellis M. West

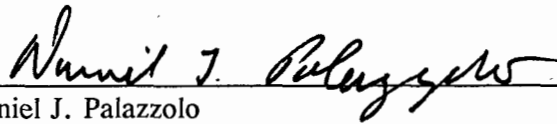
This study examines the views of F. A. Hayek on the role of reason in human affairs. The author explicates certain elements of Hayekian theory that bear on this issue—his views on the nature of mind, rules, law, and cultural evolution—and discusses the characteristics of both the constructivist and critical "kinds of rationalism" Hayek identifies.

She then examines the views of various critics who have challenged Hayek's argument. She concludes that, contrary to certain critics, 1) the distinction he draws between constructivist and critical rationalism is meaningful and that the two kinds of rationalism appear to be related to certain political views; 2) whether Hayek, despite his criticism of the constructivistic conceit, should himself be considered a constructivist depends on whether one adopts a broad or narrow interpretation of constructivism; and 3) Hayek's method of social criticism—what he terms "immanent criticism"—does provide the basis for a meaningful critical theory.

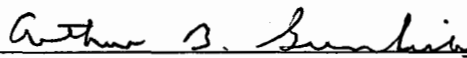
I certify that I have read this thesis and find that, in scope and quality, it satisfies the requirements for the degree of Master of Arts.

Handwritten signature of Ellis M. West in cursive script.

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Dr. Arthur B. Gunlicks

**F. A. HAYEK ON THE
ROLE OF REASON IN HUMAN AFFAIRS**

by

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B.S., Virginia Commonwealth University, 1983
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A Thesis

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Reason's Source

It's not that my mind knows less than it did before,
but that its reason finally deduced
the magic of its source,
and sensed beneath of logic of its ways
the deeper spontaneous order
that powers its own thought.

—*Jane Roberts*

ONE

THE CONTRIBUTION OF F. A. HAYEK

Friedrich August von Hayek (1899-1992) spent his formative years absorbing the cosmopolitan culture of turn-of-the-century Viennese society. He was, it appears, to the academy born. His family had long been distinguished by its scholarly and scientific pursuits (zoology, botany, chemistry, law); Ludwig Wittgenstein was a distant cousin.

Hayek received Ph.D's in both law and political economy from the University of Vienna in 1921 and 1923 respectively;¹ his teacher was Friedrich von Wieser, the great economist of the Austrian School.² Later in the decade, he worked and studied with Ludwig von Mises. Hayek tells us that Mises's *Socialism*, published in 1920, had a decisive, if gradual, influence on his intellectual development. It led him from the Fabian socialism of his youth toward the radical anti-socialism with which his name is today indelibly associated.³

Hayek is a rarity in the modern age of academic specialization, a scholar equally accomplished in several fields. His earliest achievements stemmed, as he put it, from a "very pure and narrow"⁴ preoccupation with economic theory. His first major work, *Prices*

¹John Gray, *Hayek on Liberty* (Oxford: Basil Blackwell, 1984), 141.

²The Austrian School of Economics, founded by Carl Menger in 1871, is a distinctive tradition in economic thought. The Austrian School is characterized by: 1) its theory of subjective value—the notion that value does not inhere in objects and events but is attributed to phenomena only by a perceiving mind; 2) "methodological individualism"—the idea that social phenomena can only be explained by tracing their origin to individual acts of perception and behavior; and 3) its explication of the "genetic" or evolutionary origin of social institutions. See F. A. Hayek, "Friedrich von Wieser," *The Collected Works of F. A. Hayek*, Volume IV, *The Fortunes of Liberalism* (Chicago: The University of Chicago Press, 1992), 108-125; and Norman P. Barry, *Hayek's Social and Economic Philosophy* (London: The Macmillan Press, Ltd, 1979), 22-26.

³"Ludwig von Mises," *Fortunes*, 126-159. See also Gray, 141.

⁴F. A. Hayek, "Kinds of Rationalism," *Studies in Philosophy, Politics, and Economics* (Chicago: The University of Chicago Press, 1967), 91.

and Production (1931), led to a position at the London School of Economics, where he remained as Tooke Professor of Economics and Statistics from 1931 to 1950.⁵

Throughout these years, Hayek made seminal contributions to theoretical economics: capital theory, trade-cycle theory, monetary theory, history of economic thought, and the development of Austrian economic theory. He is considered the foremost Austrian economist of the twentieth century and has been widely recognized for his pathbreaking identification of the "knowledge problem" to which the market order is the solution. In 1974, Hayek (along with Gunnar Myrdal) was awarded the Nobel prize in economic science. The Nobel committee especially commended Hayek's "profound historical exposé of . . . doctrines and opinions in th[e] field of centralized planning . . . [as well as his] . . . penetrating analysis of the interdependence of economic, social and institutional phenomena."⁶

Hayek's "second career," so to speak, has been as a political and legal philosopher. From 1950 until 1962 he was professor of social and moral sciences and chair of the Committee on Social Thought at the University of Chicago. From 1962 until his retirement, he remained in Europe, first at the University of Freiburg (1962-69) and then at the University of Salzburg. Upon retirement from Salzburg, Hayek returned to Freiburg as professor emeritus, where he remained until his death in March 1992.⁷

During this time, Hayek's chief scholarly concerns were, as mentioned, in political and legal philosophy (although in 1952 he published a work in theoretical psychology, *The*

⁵Hayek became a naturalized British citizen in 1938. Barry, x.

⁶"The Official Announcement of the Royal Academy of Sciences," in John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments*, Volume II (New York: Routledge, 1991), 189-191.

⁷Barry, x-xi.

Sensory Order, which sets forth his theory of the mind and lays the psychological foundations of his social and political theory). Hayek's work in economics had convinced him that the solutions to the great problems of our age could not be approached exclusively through advance in theoretical economics, and he returned to the interdisciplinary approach typical of the great classical theorists of moral philosophy and political economy. His deepening commitment to classical liberalism reflected his growing recognition of the functional interdependence of law, politics, and economics.

Hayek's reputation as a major political theorist was established by the publication of *The Constitution of Liberty* (1960) and the three-volume *Law, Legislation, and Liberty* (1973-79). Several volumes of essays on various aspects of politics, economics, and methodology of the social sciences were also published in 1967 and 1978. At the age of 88, he published his final work, *The Fatal Conceit*, a restatement of some of his earlier views and an elaboration of his theory of cultural evolution. Hayek was a prolific writer; he published more than twenty books, thirty pamphlets, and numerous articles and reviews.⁸

Hayek is perhaps the foremost contemporary representative of the classical-liberal political tradition. In 1947 he founded the Mont Pelerin Society,⁹ conceived as an international forum in which then-isolated classical-liberal scholars could exchange views with their colleagues throughout the world. It remains today one of the most prestigious organizations devoted to the perpetuation and elaboration of the classical liberal ideal.¹⁰

⁸An extensive bibliography of Hayek's works may be found in Gray's *Hayek on Liberty*, 143-209.

⁹Charter members included Wilhelm Röpke; Michael Polanyi; Bertrand de Jouvenal; Milton Friedman; Karl Popper; Lionel Robbins; George Stigler; and Walter Lippman. "Opening Address to a Conference at Mont Pelerin," *Fortunes*, 237.

¹⁰"Introduction," *Fortunes*, 14.

II

Hayek's influence on both mainstream academic thought and contemporary political affairs has been checkered. During the 1930s, his consistent opposition to the views of J. M. Keynes brought him widespread academic recognition, and, upon the 1944 publication of *The Road to Serfdom*, he became for a time "the second most famous economist on the planet."¹¹ The post-war ascendancy of Keynesianism, however, was accompanied by a corresponding decline in Hayek's prestige and influence. Then in the 1970s, both the disintegration of the Keynesian consensus and his recognition by the Swedish Academy contributed to a revival of interest in Hayek's work. Several expository and critical commentaries have been produced by young scholars.¹² A four-volume collection of critical assessments¹³ and four volumes of an anticipated nineteen-volume set of his *Collected Works* have also appeared.¹⁴ Graduate seminars on Hayek's legal and political philosophy are becoming, if not commonplace, then at least available.¹⁵

Despite the respect and acclaim accorded Hayek by his peers, he nevertheless remains something of a marginal figure in mainstream academic thought. This is no doubt

¹¹John Gray, "Hayek as Conservative," *Post-Liberalism* (Oxford: Basil Blackwell, 1993), 4.

¹²These include: N. Barry, *Hayek's Social and Economic Philosophy* (London, 1979); J. Gray, *Hayek on Liberty* (Oxford, 1984); R. Butler, *Hayek: His Contribution to the Political and Economic Thought of Our Time* (London, 1983); B. L. Crowley, *The Self, the Individual, and the Community: Liberalism in the Political Thought of F. A. Hayek and Sidney and Beatrice Webb* (Oxford, 1987); and C. Kukathas, *Hayek and Modern Liberalism* (Oxford, 1989). Source: Kukathas, 3.

¹³John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments*, Volumes I-IV (New York: Routledge, 1991).

¹⁴These are: Volume I: *The Fatal Conceit: The Errors of Socialism* (1988); Volume III: *The Trend of Economic Thinking: Essays on Political Economists and Economic History* (1991); and Volume IV: *The Fortunes of Liberalism: Essays on Austrian Economics and the Ideal of Freedom* (1992), (Chicago: The University of Chicago Press).

¹⁵For instance, at Oxford, the London School of Economics, Dalhousie University, and George Mason University.

partially a result of Hayek's inter-disciplinary approach to the study of social affairs. More importantly, however, Hayek's views run against the current of both mainstream economic and political thought, and for somewhat the same reasons. On Hayek's view, both of these disciplines are preoccupied with the wrong questions.¹⁶ Neo-classical economists are obsessed with the mathematical description of static "equilibrium" states, and modern political theorists since John Rawls are obsessed with contriving and justifying preferred conceptions of appropriate "distributive" patterns. Neither are especially concerned with investigating the nature of the social process and the constraints it imposes on the political, legal, and economic institutions of the liberal order, Hayek's own principal concern. Hayek's views (and those of the Austrian School in general) pose a challenge to the dominant paradigms in both disciplines, and it is not surprising that he never achieved the popularity of theorists more in accord with the prevailing outlook.

Hayek's influence on practical affairs has nevertheless been substantial. His views inspired the economic policy adopted by Ludwig Erhard in post-World War II Germany.¹⁷ Many of the market-oriented reforms instituted by Margaret Thatcher and the New Right in Great Britain in the 1980s were instituted by adherents to Hayekian views. David Stockman admired his work.¹⁸

Hayek is perhaps better known in Europe and Canada than in America. His philosophy, however, is congenial to certain American conservatives, those who, like Robert Nisbit, are disturbed by the erosion of traditional centers of authority—church, family, custom—that has accompanied the growth of centralized political power, as well as

¹⁶Cf. Chandran Kukathas, *Hayek and Modern Liberalism* (Oxford: Clarendon Press, 1989), 3-4.

¹⁷"Introduction," *Fortunes*, 13-14.

¹⁸Conrad P. Waligorski, *The Political Theory of Conservative Economists* (Lawrence: The University Press of Kansas, 1990), 11.

those who appreciate Hayek's emphasis on the concrete historicity of social evolution. His views also have some appeal to libertarians and others who are alarmed by the dramatic growth in government that has occurred in the Western democracies throughout the twentieth century, as well as to the "market-liberal" and "public-choice" schools represented by thinkers such as Milton Friedman and James Buchanan. Curiously, certain "postmodern" philosophers also appear to have "discovered" Hayek. His life-long repudiation of scientistic social science and his evolutionary approach to epistemology are in sympathy with certain post-modern critiques of rationalism and scientific methodology.¹⁹

It is difficult to place Hayek's thought on the conventional liberal/conservative spectrum. Through some eyes, he appears as a modern rationalistic liberal while others perceive him as a representative conservative thinker. His work is discussed in both *The Liberal Tradition in European Thought* and *The Conservative Tradition in European Thought*.²⁰ This is appropriate, for Hayek does not belong to either the modern liberal or conservative camps. He is, as he puts it, an "unrepentant Old Whig"²¹ in the tradition of David Hume, Adam Smith, Alexis de Tocqueville, T. B. Macaulay, and Lord Acton. It is more a sign of the times and the inadequacy of the conventional categories than an ambiguity in Hayek's position that critics can not agree on the appropriate label for his views. He is, quite simply, a liberal in the nineteenth-century European sense of the term.

¹⁹Cf. G. B. Madison, "Hayek and the Interpretive Turn," *Critical Review* (Spring 1989): 169-185.

²⁰Cited in Waligorski, 6.

²¹F. A. Hayek, *The Constitution of Liberty* (Chicago: The University of Chicago Press, 1960), 409.

III

Throughout a lifetime of scholarly investigation, Hayek was concerned to explore certain epistemological issues that bear on social-science methodology in general and economic and political theory in particular. Among the major of these issues lie the following: the extent to which human reason is capable of 1) consciously co-ordinating the actions of the numerous members of any complex social order; and 2) determining either the rules or values that should govern a society or the ends that its members ought to pursue. Such epistemological concerns were central to Hayek's investigations because he believed the rise of the illiberal collectivist ideologies he was concerned to refute (especially, socialism and its variants) could be attributed, in large part, to mistaken notions concerning the nature and function of human reason.²²

According to Hayek, the Western liberal tradition has been shaped by two distinct schools of thought—the French rationalist and the British evolutionary traditions—which embrace very different conceptions of liberty, social order, and the role of reason in human affairs.²³ Our interest lies in the distinction Hayek draws between the two "kinds of rationalism"²⁴ which he believes are related to the two schools. Adherents to the French tradition, he claims, typically exhibit a profound (if mistaken) regard for the constructive powers of reason and tend, moreover, to attribute social order to rational design and conscious intention (views Hayek associates with what he terms "constructivist or naive

²²F. A. Hayek, *The Counter-Revolution of Science: Studies on the Abuse of Reason* (London: The Free Press of Glencoe, 1955).

²³*Constitution*, 54-62.

²⁴"Kinds of Rationalism," *Studies*, 82-95.

rationalism"²⁵). The evolutionary school, which Hayek himself represents,²⁶ is characterized, on the contrary, by an acute awareness of the limits to the constructive powers of reason and an understanding of social order as the unintended outcome of rule-governed human behavior (views Hayek associates with an "evolutionary or critical rationalism"²⁷).

One of Hayek's principal concerns, then, is to repudiate the "constructivist" view that man is able consciously to construct or invent social institutions such as law and morals because he possesses "reason." He argues that proponents of such "design theories" misunderstand the processes responsible for the growth of civilization and attribute unjustified authority to human reason in regard to both cultural advance and the creation of the Good Society. Hayek claims, in short, that the constructivistic political and scientific views that have prevailed since the Enlightenment embody a false epistemology which engenders legislation and public policy that must undermine the institutional foundation of the liberal order.²⁸

Hayek, one might say, is still doing battle with the Enlightenment. Carrying on the anti-rationalist project begun by David Hume, he is still striving to "whittle down the claims

²⁵F. A. Hayek, *Law, Legislation, and Liberty*, Volume 1, *Rules and Order*, (Chicago: The University of Chicago Press, 1973), 8-34. Among the "constructivists" identified by Hayek are: J. J. Rousseau, Voltaire, Condorcet, Jeremy Bentham, the Mills, Auguste Comte, G. F. W. Hegel, Karl Marx, and Thomas Jefferson.

²⁶Hayek's classical liberalism, then, should be distinguished from such rationalistic strains of liberalism as contractarian and rights-based theories, both of which, on Hayek's view, attribute unjustified authority to human reason in suggesting that social institutions have been or should be constructed for a determinate purpose.

²⁷*Ibid.* Representative thinkers within this tradition include: Bernard Mandeville, David Hume, Adam Ferguson, Adam Smith, Edmund Burke, T. B. Macaulay, Lord Acton, William Gladstone, Alexis de Tocqueville, Immanuel Kant, Friedrich von Schiller, Wilhelm von Humboldt, and, in America, James Madison, John Marshall, and Daniel Webster.

²⁸*Constitution*, 231-233; also, *Rules and Order*, 32-33.

of reason by . . . rational analysis,"²⁹ for he believes that the preservation of liberal institutions depends upon our willingness to be governed by certain inherited rules of individual and collective conduct whose origin, function, and rationale we may not fully comprehend.³⁰ He also believes, however, that rational insight into the nature and requirements of the liberal order will both commend allegiance to traditional liberal principles of limited government and the rule of law and reveal the poverty of rationalist schemes of social reconstruction. He pleads for reason—insight, comprehension, recognition—to prevail over rationalism and to do so by recognizing limits to the scope of its authority and competence. Only thus, he suggests, may we prevent the "destruction of indispensable values"³¹ that, for Hayek, is the tragic, if unintended, consequence of the Enlightenment project.

IV

Paradoxically, Hayek, the "rational persuader,"³² spent his life seeking rationally to delineate the limits to the authority and competence of human reason. The purpose of this study is threefold: to explore those limits in some depth; to evaluate whether the distinction Hayek draws between constructivistic and critical rationalism contributes to our understanding of the appropriate role of reason in human affairs; and to determine whether

²⁹*Constitution*, 69.

³⁰*Ibid*, 62.

³¹*Rules and Order*, 6.

³²Sir Arnold Plant, "A Tribute to Hayek—the Rational Persuader," *Economic Age* 2 (Jan/Feb 1970): 4-8.

his own thought is entirely free from the very kind of rationalism—the constructivist kind—he is concerned to repudiate.

In the following chapter, "Reason, Evolution, and Design," we present an exposition and explication of certain aspects of Hayek's philosophy relevant to the issue of the role of reason in human affairs. We examine his views on the nature of mind, reason, rules, law, cultural evolution, and the characteristics of the constructivist and critical rationalist manners of thinking.

In chapter three, "Criticism and Commentary," we endeavor to determine whether Hayek in fact draws a clear and meaningful distinction between the two "kinds of rationalism" or whether, as certain critics have contended, the categories are too imprecise and confused to be useful as explanatory constructs. We shall also explore whether Hayek's preferred method of social criticism—what he terms "immanent criticism"—provides guidelines that enable us to distinguish between the proper use (critical rationalism) and improper abuse (constructivism) of our rational faculties or whether, as several critics claim, his extreme "anti-rationalism . . . [and] . . . and quietest traditionalism . . . virtually disable"³³ critical evaluation of existing social institutions and practices.

We shall also inquire whether the position Hayek takes on the role of reason is entirely consistent or coherent. As one critic puts it, ". . . given his view of the limited role reason can play in social life, how is it possible [for Hayek] to mount a systematic defence of liberalism without falling victim to the very kinds of rationalism he criticizes?"³⁴ To such critics, Hayek appears to resort to the constructivistic approach he condemns in other

³³Norman P. Barry, "Hayek on Liberty," Zbigniew Pelczynski and John Gray, eds, *Conceptions of Liberty in Political Philosophy* (New York: St. Martin's Press, 1984), 280.

³⁴Kukathas, vii.

thinkers and he thus stands accused of self-contradiction and inconsistency. We shall attempt to determine whether such charges are valid.

The conclusions of our study may be briefly summarized as follows: 1) Contrary to certain of Hayek's critics, we shall argue that his distinction between constructivistic and critical rationalism is meaningful and useful and that certain conceptions of the nature and capacity of human reason appear to be related to certain political views. Hayek may be faulted, however, for failing precisely to specify the defining attribute of each of the "kinds of rationalism," a failure which has led to accusations of vagueness and ambiguity. 2) Whether Hayek, despite his criticism of the constructivistic conceit, should himself be considered a constructivist depends on whether we adopt a broad or narrow interpretation of constructivism. If we interpret constructivism broadly as the endeavor to employ reason in the rational design of a social order, then, Hayek must plead guilty to endorsing, to a limited degree, the constructivism he simultaneously denounces. If, however, constructivism is interpreted narrowly as the belief that reason is adequate to the tasks of either determining an appropriate concrete pattern for a complex society or consciously regulating the particular affairs of its members, then Hayek is no constructivist. 3) Hayek's method of "immanent criticism," we shall argue, is adequate to the task he assigns it and does provide the basis for a meaningful critical theory.

We argue, in short, that those critics who perceive fundamental and "unresolvable conflicts"³⁵ within Hayek's position on reason exaggerate. The undeniable tension that is generated by the play of rationalist and anti-rationalist elements in his thought is curious and paradoxical, but not "incoherent."³⁶ And although, in our opinion, the distinction

³⁵Kukathas, 201.

³⁶As Kukathas, for instance, suggests, *Ibid*, 228.

between constructivism and critical rationalism does clarify the role of reason in political affairs, we conclude that Hayek has not completely foresworn what one commentator calls his "lingering commitment to . . . rational reconstruction. . . ." ³⁷

The role of reason in political affairs has been of perennial interest to political philosophers. If Hayek is correct, however, our interest in such matters should be more than academic. For Western liberal society presently stands at a curious juncture. The authority of the moral and political traditions whose observance generated the liberal order has eroded in many quarters, and it has been suggested that we are living on the "moral capital" of an earlier era. Hayek obviously hopes that rational insight into the function served by nonrational political and moral traditions in regard to the maintenance of liberal society may supply the want of traditional authority—religion and custom—increasingly characteristic of our time.

³⁷John Gray, *Liberalisms* (New York: Routledge, 1989), 99.

Any social processes which
deserve to be called social
in distinction to
the actions of individuals
are almost *ex definitione* not conscious.

—F. A. Hayek

T W O

REASON, EVOLUTION, AND DESIGN

Although the concept of reason plays a central role in Hayekian philosophy, one will search in vain for a definition of reason in his work. On the whole, when Hayek speaks of reason, he seems to refer to a conscious thought process that endeavors to discern patterns in human experience and to predict and control the consequences of action. Reason, he suggests, encompasses the capacity to be "guided . . . by foresight—by conscious . . . insight into the connections between . . . particular known means and certain desired ends."³⁸ Elsewhere, however, Hayek suggests that rationality (he does not explicitly distinguish between either "reason" and "rationality" or "reasonable" and "rational") is ". . . no more than some degree of coherence and consistency in a person's actions, some lasting influence of knowledge or insight which, once acquired, will affect his action at a later date and in different circumstances."³⁹

Hayek also maintains that behavior guided by habit, custom, and tradition is rational "in the sense of [not] being contrary to intelligent action";⁴⁰ one of his main contentions is that "[t]here [is] . . . 'intelligence' incorporated in the [inherited] system of rules of conduct [as well as in] man's [explicit] thoughts about his surroundings."⁴¹ It is fair to say that, for Hayek, rationality is as much an attribute of the social process as of the individual mind, that he "locates rationality not [only] in the isolated, individual

³⁸F. A. Hayek, "The Errors of Constructivism," *New Studies in Philosophy, Politics, Economics, and the History of Ideas* (Chicago: The University of Chicago Press, 1979), 6-7.

³⁹*Constitution*, 77.

⁴⁰*Ibid*, 34.

⁴¹F. A. Hayek, *Law, Legislation, and Liberty*, Volume 3, *The Political Order of a Free People* (Chicago: The University of Chicago Press, 1979), 157.

consciousness but [also] in the network of social institutions."⁴² The sort of rationality embedded within the social process, however, is different from the conscious, explicit mental activity engaged in by the reasoning intellect; "[a]ny social processes which deserve to be called social in distinction to the actions of individuals are [for Hayek] almost *ex definitione* not conscious."⁴³ In general, Hayek is less concerned to define and describe the capabilities of reason than to show that "men are in their conduct *never* guided *exclusively* by [a rational] . . . understanding of [cause and effect] . . . but always also by rules of conduct of which they are rarely aware, [and] which they certainly have not consciously invented."⁴⁴

Hayek seems to conceive reason as an indispensable tool that serves a primarily negative function: to "steer"⁴⁵ or restrain action motivated by ultimately nonrational factors (instinct, impulse, morals, values).⁴⁶ He emphasizes that reason, by itself, can never determine the ends of action.⁴⁷ It can do so only in conjunction with one of these

⁴²Kukathas, 97.

⁴³*The Counter-Revolution of Science*, 87. Moreover, "the only 'reason' which can in any sense be regarded as superior to individual reason does not exist apart from the inter-individual process in which, by means of impersonal media, the knowledge of successive generations and of millions of people living simultaneously is combined and mutually adjusted, and that this process is the only form in which the totality of human knowledge ever exists" (*Ibid*, 91).

⁴⁴"The Errors of Constructivism," *New Studies*, 7.

⁴⁵*Rules and Order*, 32.

⁴⁶Values . . . are the ends which reason serves but which reason cannot determine. . . ." "Kinds of Rationalism," *Studies*, 87. "Like all other values, our morals are not a product but a presupposition of reason, part of the ends which the instrument of our intellect has been developed to serve." *Constitution*, 63.

⁴⁷*Rules and Order*, 32. Hayek, we should note, employs the terms "value" and "end," and "opinion" and "will," in a special sense. The first term of either pair refers to the abstract and the general, while the second terms refer to the particular and concrete.

Will and End: A human *will*, for Hayek, is always concerned with the achievement of a "particular, concrete result which, together with the known particular circumstances of the moment, will suffice

nonrational factors and will, moreover, "often tell us only what not to do."⁴⁸ Reason, he claims, "is merely a discipline, an insight into the possibilities of successful action,"⁴⁹ a servant of given values which it did not create and which it cannot justify.

Reason does, on Hayek's view, provide guidance in the determination of human action. It enables man to identify inconsistencies and contradictions in his thought and action,⁵⁰ conflicts of values, and perhaps the appropriateness of means to given ends, as well as to deduce, infer, calculate, and so on. Reason is capable, moreover, of recognizing its own limitations and sphere of competence: "Surely, one of the tasks of reason is to decide how far it is to extend its control or how far it ought to rely on other forces which it

to determine a particular action" (F. A. Hayek, *Law, Legislation, and Liberty*, Volume 2, *The Mirage of Social Justice* (Chicago: The University of Chicago Press, 1976), 13). The will "ceases when the 'end'—the particular expected effect . . . which motivate[s] a particular action—is achieved" (*Ibid*).

Opinion and Value: Opinions and values, by contrast, refer to certain general abstract aspects of social life. Opinion, which "constitutes a lasting *disposition* which will guide many particular acts of will" (*Ibid*), expresses a view about the desirability or undesirability of particular "manners of acting"; and it leads to approval or disapproval of conduct according as it does or does not conform to one's own view of what is right and proper. One's opinion, then, provides the basis for one's evaluation of many particular events that possess only certain abstract features in common and is, in itself, insufficient to determine a particular action; it will do so only in combination with some particular goal (*Ibid*, 13-14).

Similarly, the term "value" as Hayek employs it "refer[s] to generic classes of events, defined by certain attributes and generally regarded as desirable. By 'desirable' . . . we . . . mean more than that a particular action is in fact desired by somebody on a particular occasion; it is used to describe a lasting attitude of one or more persons towards a *kind* of event" (*Ibid*).

⁴⁸*Rules and Order*, 32. Hayek does not elaborate on this statement, but he implies that reason can, for instance, persuade us to abandon beliefs which have been demonstrated to be untrue or methods and means that have proven not to "work." It can assist, then, in the elimination of error and clarify the choices with which we are confronted. It can "falsify" but not prove. *Counter-Revolution*, 90.

⁴⁹*Ibid*, 32. Hayek notes that "one of the lexical meanings of [discipline] is "systems of rules of conduct," a meaning close to his view. "Epilogue," *The Political Order of a Free People*, 160.

⁵⁰"Reason's most important but very unpopular task [is to] point out the inner contradictions of our thinking and feeling." "The Errors of Constructivism," *New Studies*, 20.

cannot wholly control" ⁵¹ Hayek also notes with approval that "to the medieval thinkers reason had meant mainly a capacity to *recognize* truth . . . when they met it." ⁵² Only later, under the influence of Cartesian doctrines, did the capacity to reason become identified *exclusively* with " . . . that faculty of the understanding which forms trains of thought and deduces proofs," ⁵³ a conception that Hayek explicitly rejects. ⁵⁴

We shall perhaps gain a fuller understanding of Hayek's conception of reason as we examine the characteristics of the two "kinds of rationalism" he identifies and critiques. Before we do so, however, we shall explore certain elements of Hayek's theoretical framework that bear on his conception of the role of reason in human affairs.

I. THE LIMITS TO REASON

There appear to be as many conceptions of the role of reason in human affairs as there are political philosophers and traditions. ⁵⁵ This confused state of affairs may, Hayek suggests, be related to the fact that Western philosophy has long been dominated

⁵¹*Rules and Order*, 29.

⁵²*Ibid*, 84.

⁵³"By reason, however, I do not think is meant here the faculty of the understanding which forms trains of thought and deduces proofs, but certain definite principles of action from which spring all virtues and whatever is necessary for the proper moulding of morals." John Locke, cited in "The Errors of Constructivism," *New Studies*, 19.

⁵⁴"Reason, which had included the capacity of the mind to distinguish between good and evil, that is between what was and what was not in accordance with established rules, came to mean a capacity to construct such rules by deduction from explicit premises. The conception of natural law was thereby turned into a 'law of reason' and thus almost into the opposite of what it had meant. . . ." *Rules and Order*, 21.

⁵⁵Cf. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988).

by the "false dichotomy"⁵⁶ between the "natural" (instinctual, biological) and the "artificial" (conventional, contrived, consciously designed) it inherited from the ancient Greeks. Since few philosophers⁵⁷ could bring themselves to attribute culture exclusively to biology, they were more or less compelled to regard it as the product of rational or intelligent design. Instinct and reason appeared to exhaust the possible explanatory variables.⁵⁸ The false choice posed by the exclusive alternatives of nature and convention, however, may have led many students of social and cultural phenomena to misunderstand the role of reason in their determination.

The Priority of Tradition over Reason

According to Hayek, culture and civilization are neither "natural" products of biological instinct nor "artificial" products of the reasoning mind.⁵⁹ Such phenomena are, instead, the product of another distinct endowment—tradition. Man became all he is because he is as much a "rule-following"⁶⁰ as a rational animal. He flourished because he

⁵⁶*Rules and Order*, 20.

⁵⁷Except perhaps contemporary "sociobiologists"!

⁵⁸"I want to call attention to what does indeed lie between instinct and reason, and which on that account is often overlooked just because it is assumed that there is nothing between the two." *The Fatal Conceit*, 21. See also p. 143 of that work.

⁵⁹"Culture is neither natural nor artificial, neither genetically transmitted nor rationally designed. . . ." *The Political Order of a Free People*, 154.

⁶⁰Rule, as conceived by Hayek, is a very broad concept. He defines "rule" as "a propensity or disposition to act or not to act in a certain manner," (*Rules and Order*, 75) as a general disposition that governs a very wide class of actions, perceptions, or thought. The observance of rules is manifested in "regular" or patterned behavior, "in what we call a practice or custom." *Ibid.*

Hayek identifies three kinds of rules which "make possible the formation of social order[:] 1) rules that are merely observed in fact but have never been stated in words; if we speak of the 'sense of justice' or 'the feeling for language' we refer to such rules which we are able to apply, but do not know explicitly; 2) rules that, though they have been stated in words, still merely express approximately what has long before been generally observed in action; and 3) rules that have been

evolved a highly developed capacity to absorb and transmit learned rules⁶¹—rules embodied in his cultural traditions—that structure and govern his thought, perception, and behavior.

One of Hayek's principal concerns, then, is to refute the notion that human beings were somehow able to "create" culture and civilization because they were beings uniquely endowed with "reason." Man, he tells us, did not possess a developed ability to reason prior to the emergence of established traditions.⁶² He ". . . became intelligent because there was tradition—that which lies between instinct and reason—for him to learn."⁶³

. . . [I]t was a repertoire of learnt rules which told him what was the right and what was the wrong way of acting in different circumstances that gave him his increasing capacity to adapt to changing conditions—and particularly to co-operate with the other members of his group. Thus a tradition of rules of conduct, existing apart from any one individual who learnt them, began to govern human life. It was when these learnt rules, involving classifications of different kinds of objects, began to include a sort of model of the environment that enabled man to predict and anticipate in action

deliberately introduced and therefore necessarily exist as words set out in sentences. Constructivist would like to reject the first and second groups of rules, and to accept as valid only the third group. . . ." "The Errors of Constructivism," *New Studies*, 8-9.

⁶¹See page 21 for a more extensive discussion of the process whereby man acquires and transmits rules.

⁶²The capacity unconsciously to acquire and transmit rules necessarily operated long before man possessed language, let alone the capacity to "reason." The ability to reason—to identify relations of "cause and effect," to deduce, infer, calculate, "critically analyze," and so on—could not have developed prior to the habitual observance of certain nonrational traditions and rules. Prolonged habitual response was requisite even to the formation of a neurological structure capable of perceiving an environment sufficiently "regular" to suggest the existence of stable relations among phenomena.

"Learning how to behave is more the *source* than the *result* of insight, reason, and understanding . . . it is not our intellect that created our morals; rather, human interactions governed by our morals make possible the growth of reason and those capabilities associated with it. Man became intelligent because there was *tradition* . . . for him to learn, a tradition . . . [which] originated not from a capacity rationally to interpret observed facts but from habits of responding. It told man primarily what he ought or ought not to do under certain conditions rather than what he must expect to happen." *The Fatal Conceit*, 21-22.

⁶³*Ibid*, 21.

external events, that what we call reason appeared. There was then probably much more 'intelligence' incorporated in the system of rules of conduct than in man's thoughts about his surroundings.

It is therefore misleading to represent the individual brain or mind as the capping stone of the hierarchy of complex structures produced by evolution which then designed what we call culture. The mind is embedded in a traditional impersonal structure of learnt rules, and its capacity to order experience is an acquired replica of cultural pattern which every individual mind finds given. *The brain is an organ enabling us to absorb, but not to design culture.* . . .⁶⁴

As we shall discuss more fully below, Hayek argues that the mind itself must be recognized as an evolved and evolving phenomenon, a structure as adapted to the circumstances of human existence as the physical body. Such a mind could (and can) evolve only *because* there were pre-existing traditions—habitual behaviors, customs, and practices—to absorb: "It may well be asked whether an individual who did not have the opportunity to tap . . . a cultural tradition could be said even to have a mind."⁶⁵ The ability to reason, in short, is fully a product of social experience and, moreover, a relatively recent development within the vast frame of human history.⁶⁶ "Man did not possess reason before civilization. The two evolved together."⁶⁷

According to Hayek, then, man's ability to acquire and transmit cultural rules is the main "cause" of his cultural advance. Such a capacity insures that each generation need

⁶⁴"Epilogue," *The Political Order of a Free People*, 157.

⁶⁵*The Fatal Conceit*, 23. Hayek considers his conception of culture similar to Karl Popper's conception of "world 3"—a body of phenomena "kept in existence by millions of separate brains participating in it [that is] . . . the outcome of a process of evolution distinct from the biological evolution of the brain. . . . [Moreover,] . . . mind can exist only as part of [this other] . . . independently existing distinct structure or order [i.e., culture], though that order persists and can develop only because millions of minds constantly absorb and modify parts of it. . . ." *Political Order of a Free People*, 157.

⁶⁶*Political Order of a Free People*, 156, 160.

⁶⁷"The Errors of Constructivism," *New Studies*, 3-4. "This [the issue of the priority of reason or civilization] is, in a way, a 'hen or egg' kind of question—nobody will deny that the two phenomena constantly interact." "Kinds of Rationalism," *Studies*, 86.

not begin life "from scratch," but can build upon the cumulative experience and knowledge gained by its predecessors. Moreover, Hayek maintains that those rules (both tacit and explicit) that were preserved long enough to form a "tradition" were preserved because they had proved *in practice* to contribute to the effectiveness and flourishing of the groups who observed them.⁶⁸ Those that prevailed, in other words, served a function in regard to the maintenance of the social order, a function, however, of which no one need have been consciously aware.

[Custom and tradition] . . . were not formed by drawing reasoned conclusions from certain facts or from an awareness that things behaved in a particular way. Though governed in our conduct by what we have learnt, we often do not know why we do what we do. Learnt moral rules, customs, progressively displaced innate responses, not because men recognized by reason that they were better but because they made possible the growth of an extended order exceeding anyone's vision in which more effective collaboration enabled its members, however blindly, to maintain more people and to displace other groups.⁶⁹

We shall discuss Hayek's theory of cultural evolution more fully below.

⁶⁸As we shall discuss more fully below, Hayek associates human flourishing with increased population, individuation, and specialization, which, he believes, are prerequisite to both material and spiritual advance. What he argues is that certain groups proliferated and prevailed because they "stumbled upon" certain rules whose observance unwittingly "create[d] an ordered structure which increase[d] the power of the individuals without having been designed by any one of them." *Counter-Revolution*, 87.

⁶⁹*The Fatal Conceit*, 23.

On the Acquisition and Transmission of Rules

All creatures obey rules in the sense that their behavior may be described in terms of observed regularity.⁷⁰ Man is distinguished, of course, by his more highly developed capacity to learn—to acquire culturally transmitted rules.

According to Hayek, the acquisition and transmission of rules is effected by an essentially non-rational process of observation and imitation—what may be termed "sympathetic identification." Long before humans acquire language, they observe and imitate the actions of their fellows, thereby tacitly acquiring "knowledge how"⁷¹ to perceive and behave in accordance with prevailing cultural rules. We are generally little aware of the extent to which our minds and experience are structured and governed by rules acquired in such a manner.⁷²

Perhaps the most striking example of the human ability to absorb and act upon highly complex rules prior to the development of the reasoning mind is the child's ability to learn language—to master complicated syntactical patterns, to speak "as if" it knew the

⁷⁰Regularity, of course, is merely the temporal manifestation of rule-governed behavior.

⁷¹Hayek sometimes employs Gilbert Ryle's terminology—"knowing how" and "knowing that"—to express the distinction between tacit and explicit knowledge. "The Primacy of the Abstract," *New Studies*, 38.

⁷²The acquisition of perceptual and behavior rules also occurs simultaneously with the acquisition of language: ". . . [M]an's capacity to think is not a natural endowment of the individual but a cultural heritage, something transmitted not biologically but through example and teaching—mainly through, and implicit in, the teaching of language. The extent to which the language which we learn in early childhood determines our whole manner of thinking and our view and interpretation of the world is probably much greater than we yet aware of . . . [T]he structure of the language itself implies certain views about the nature of the world and by learning a particular language we acquire a certain picture of the world, a framework of our thinking within which we henceforth move without being aware of it. As we learn as children to use our language according to rules which we do not explicitly know, so we learn with language not only to act according to the rules of language, but according to many other rules of interpreting the world and of acting appropriately, rules which will guide us though we have never explicitly formulated them. . . ." "Kinds of Rationalism," *Studies*, 86-87.

rules of grammar—solely by means of imitation and analogy.⁷³ Moreover, it is obvious to us that no one "made" these rules of grammar the child so unerringly observes; the body of grammar we have developed merely articulates the rules "found" to be governing the operation of the mind.⁷⁴ We further recognize that our "feeling for language" (that is, our ability to follow rules that we may not be able explicitly to state) remains the indispensable guide to appropriate speech and writing.

We have emphasized the nonrational character of the process whereby one learns to speak and master language because, according to Hayek, it is also the process whereby one learns the rules that structure and govern one's thought, perception, and behavior.⁷⁵ Just as no one learns to speak by studying a grammar text, so no one learns to think or behave by studying the rules of logic or law. Moreover, the relation between spoken language and formal rules of grammar is wholly analogous to the relation between traditional social practices and the formal rules of law. As little as the rules of grammar are the product of reason are the rules of law.⁷⁶

⁷³"Rules, Perception, and Intelligibility," *Studies*, 43-45; and "The Primacy of the Abstract," *New Studies*, 38-39.

⁷⁴*Ibid.*

⁷⁵"The important point is that every man growing up in a given culture will find in himself rules or may discover that he acts in accordance with rules—and will similarly recognize the actions of others as conforming or not conforming to various rules." *Rules and Order*, 19.

⁷⁶"The Primacy of the Abstract," *New Studies*, 46-48; and "Kinds of Rationalism," *Studies*, 86-87.

A Digression on Law: The Grammar of Practice

"The aim of jurisdiction," Hayek tells us, "is the maintenance of an ongoing order of actions."⁷⁷ He thus reminds us that all law tacitly presupposes the existence of and refers to an ongoing factual order of activities, a comprehensive "background order" which, "although . . . the result . . . of the regularities of the actions of the individuals, must be clearly distinguished from them. . . ."⁷⁸

According to Hayek, law in the sense of enforced rules of conduct is coeval with society, for the *de facto* observance of common rules is what constitutes even the most primitive social group.⁷⁹ Prevailing rules will not necessarily be recognized or explicitly treated as rules but will manifest themselves as habitual perception or behavior—as customs and conventions. Those who practice certain inherited customs may not be aware that in so doing they contribute to the maintenance of the social order—they may merely "know" that certain actions are taboo or "just not done"—yet those whose task it is to articulate the enforceable rules will be guided, more or less consciously, by an

⁷⁷*Rules and Order*, 98.

⁷⁸*Ibid*, 74. "Only when it is clearly recognized that the order of actions is a factual state of affairs distinct from the rules which contribute to its formation can it be understood that such an abstract order can be the aim of the rules of conduct." *Ibid*, 114. See Appendix A for a discussion of the character of the "background order" to which Hayekian theory refers and Appendix B for a discussion of the attributes and source of law.

⁷⁹Contrary to J. J. Rousseau *et al*, Hayek claims that early man did not know solitude; man always and only existed as a member of a group. "The savage is not solitary, and his instinct is . . . collectivist. . . . [In the beginning, notes Hayek,] . . . a solitary man would have been a dead man." *The Fatal Conceit*, 12. Both the "state of nature" and the "social contract" are myths.

awareness that the rules "refer to certain presuppositions of an ongoing order which no one has made but which nevertheless is seen to exist."⁸⁰

The rules that structure modern liberal society, then, refer to certain presuppositions and requirements of that *kind* of social order, presuppositions and "inchoate rules"⁸¹ that are closely related to the "sense of justice." Once again, an analogy drawn from language may assist our understanding. As one's "feeling for language" enables one to recognize the appropriateness or inappropriateness of the spoken or written word without explicit knowledge of the rule applicable to the case at hand, so one's "sense of justice" enables one to recognize an inappropriate (or "unjust") rule or action without necessarily being able to articulate the rule that has been violated. As the task of the grammarian is to articulate the general rule that governs a particular linguistic usage, so the task of the judge or jurist is to "discover" the general rule that (implicitly or explicitly) governs the case at hand. The rules of both law and grammar, then, are part of that abstract structure of rules "found" to be governing the operation of the mind.⁸²

The task of the judge, then, is not to "invent" or construct good law but to bring to conscious awareness the general principle or rule which, when once expressed, will be

⁸⁰*Rules and Order*, 96.

⁸¹Or "principles," *Ibid*, 119.

⁸²Both the "feeling for language" and the "sense of justice" can thus be explained in terms of Hayek's theory of the mind. As we discussed, Hayek contends that all behavior and perception are governed by the abstract system of rules that constitutes the mind. These rules govern behavior regardless of whether they have been recognized or expressed in words. Some persons may be better at successfully articulating the rules that underlie social interaction in a given culture, but rules of both grammar and justice govern the operation of the mind long before they have been explicitly stated or discursively described. This is why Hayek says that rules are "found," not made. To repeat: "The important point is that every man growing up in a given culture will find in himself rules or may discover that he act in accordance with rules—and will similarly recognize the actions of others as conforming or not conforming to various rules." *Ibid*, 19.

recognized as just (or at least not unjust)—which means, more or less, as in conformity with the implicit rule that has customarily guided spontaneous interaction in a given society.⁸³ The law that emerges from the law-finding efforts of judges or jurists (for instance, the English common law) always emerges, in other words, as a result of "effort[s] to secure and improve a system of rules which are already observed."⁸⁴ All valid law, including the law that structures the spontaneous order of liberal society, is, according to Hayek, of this nature (see Appendices A and B).

Hayek is concerned, then, to show that evolved social phenomena such as law and language exhibit certain similarities. First, law, like grammar, refers to a factual overall order (or abstract pattern)—an objective order which is the unintended result of human perception and behavior yet which is distinct from that behavior—of which actors and speakers are, in general, only tacitly aware. Second, the rules whose observance generated liberal society were as little the product of rational design or deliberate invention as were the rules of grammar. They emerged, instead, through the ongoing efforts of judges to articulate, develop, and interpret the (implicit and explicit) rules that structured a pre-existing order of actions.⁸⁵

The development of law, in other words, always proceeds within a *given* framework of values, rules, and practices, the observance of which generates the overall social order. The task of the judge or jurist, although certainly an intellectual task, is not

⁸³*Rules and Order*, 76-78.

⁸⁴*Ibid*, 96.

⁸⁵*Ibid*, 98-123.

one that entails the exercise of deductive reasoning or syllogistic logic.⁸⁶ In resolving disputes, the judge is, in effect, asked to clarify which of conflicting expectations are to be treated as legitimate. And that depends, in turn, on the requirements of the overall social order and not, we may note, on his or anyone else's preferences, rational or otherwise.⁸⁷

The Process of Cultural Evolution

According to Hayek, our inherited social institutions, morals, language, and law⁸⁸ are the outcome of a process of cultural evolution,⁸⁹ selected, at bottom and over the long run, for their human survival-value. Those that survived this process did so because they "assisted the proliferation"⁹⁰ and "enhanced the prosperity of certain groups . . . [and thus] . . . led to the formation of larger orderly groups of gradually increasing size."⁹¹

⁸⁶"Like most other intellectual tasks, that of the judge is not one of logical deduction from a limited number of premises, but one of testing hypotheses at which he has arrived by processes only in part conscious." *Ibid*, 120.

⁸⁷*Ibid*, 115, 119-120. "[T]he rules of just conduct which emerge from the judicial process . . . are *discovered* in the sense that they merely articulate already observed practices or in the sense that they are found to be required complements of the already established rules if the order which rests on them is to operate smoothly and efficiently." *Ibid*, 123. Even the very first rules "discovered" by the earliest counterpart of the judge were not the product of reason, but of an effort to articulate a rule which had long been honored in action as evidenced by the customary practices of the people. *Ibid*, 76-78.

⁸⁸*Constitution*, 57.

⁸⁹A process, we should note, that is ongoing

⁹⁰*The Fatal Conceit*, 75.

⁹¹By both "more rapid procreation [and] . . . the attraction of outsiders." *Political Order of a Free People*, 155-159.

Those customs and traditions that have endured over time did so, in short, because they "increased the chances of survival of the group[s]"⁹² who observed them.

Hayek's argument is that certain nonrational rules and practices (which may have originated as "irrational" taboos, superstitions, or religious beliefs⁹³) spread via a process of imitation and emulation because the observance of such rules unwittingly produced an overall order of activities that was capable of supporting larger and larger numbers of persons. ". . . [I]t is the efficiency of the resulting order of actions which . . . determine[s] whether groups whose members observe certain rules of conduct will prevail."⁹⁴ Those groups who observed what proved to be superior rules thus gradually displaced those groups who observed what proved to be less-adaptive rules and practices.

Learnt moral rules, customs, progressively displaced innate responses, not because men recognized by reason that they were better but because they made possible the growth of an extended order exceeding anyone's vision in which more effective collaboration enabled its members, however blindly, to maintain more people and to displace other groups.⁹⁵

.....
The structures formed by human practices . . . are . . . the result of a process of winnowing or sifting, directed by the differential advantages gained by groups from practices adopted for some unknown and perhaps purely accidental reasons. . . . [The] present order of society has largely arisen, not by design, but by the prevalence of the more effective institutions in a process of competition.⁹⁶

.....
The reason why one rule rather than another was adopted and passed on will be that the group that had adopted it did in fact prove the more efficient, not that its members foresaw the effects

⁹²*Rules and Order*, 18. "For the numbers kept alive by differing systems of rules decide which system will dominate." *The Fatal Conceit*, 130.

⁹³*The Fatal Conceit*, 157.

⁹⁴*Rules and Order*, 74.

⁹⁵*The Fatal Conceit*, 23.

⁹⁶*Ibid*, 154-55.

the rule would have. What would be preserved would be only the effects of past experiences on the selection of rules, not the experiences themselves.⁹⁷

Hayek claims, then, that the "process of selection [of rules is] guided not by reason but by success Cultural selection is not a rational process; it is not guided by but it creates reason."⁹⁸

Hayek's ultimate criterion for evaluating the "success" of social institutions and practices, which no doubt shocks moralists of all persuasions, is the number of persons the social order that results from their observance can support.⁹⁹ Although he acknowledges that the morality that produced the Western liberal order ". . . is not justified by the fact that it enables us to . . . survive, [i]t does enable us to survive and there is something perhaps to be said for that We may not like the fact that our rules were shaped mainly by their suitability for increasing our numbers Life, [however,] exists only so long as it provides for its own continuance. Whatever men live *for*, today most live only *because* of the market order."¹⁰⁰

⁹⁷*Rules and Order*, 5.

⁹⁸"Epilogue," *Political Order of a Free People*, 166.

⁹⁹Norman Barry suggests, however, that Hayek's "ultimate political criterion [is some sort of] vague, indirect-utilitarian . . . progress" (Norman P. Barry, "The Liberal Constitution: Rational Design or Evolution?" *Critical Review* (Spring 1989): 275). (Hayek, incidentally, conceives of "[p]rogress [as] movement for movement's sake, for it is in the process of learning, and in the effects of having learned something new, that man enjoys the gift of his intelligence" (*Constitution*, 41).) Barry's observation is consistent with Hayek's numbers criterion because, for Hayek, "population increase is crucial to prosperity" (*The Fatal Conceit*, 155) and "pre-requisite for any advance in both material and . . . spiritual civilisation" (*Ibid*, 122), primarily because the larger the population, the greater the human individuation, differentiation, and specialization: "It is not simply more men, but more different men, which brings an increase in productivity. Men have become powerful because they have become so different. . . ." (*Ibid*, 122-23).

¹⁰⁰*The Fatal Conceit*, 32-33.

Hayek's argument, then, is that the "extended order of human cooperation,"¹⁰¹ his term for the Great or Open Society¹⁰² that characterizes modern Western civilization, was brought into being because its members observed certain values (private property, honesty, truthfulness, saving, respect for the individual, and so on). Such values, he contends, "serve a function or 'purpose'"¹⁰³ in regard to the maintenance of the social order—even more, the "existing factual order exists only because people accept [these] values."¹⁰⁴ Consequently, we who wish to preserve a free and liberal society are constrained to observe certain rules and values despite the facts that we may not comprehend their rationale or significance or obtain happiness or pleasure in the process.¹⁰⁵

The Theory of the Mind

Hayek's views on the role of reason in human affairs should be understood in light of his general theory of the mind. The human mind, he tells us, is an evolved (and evolving) phenomenon which consists of a system of abstract rules, a structure shaped in response to both the individual's and the species' experience within social and physical reality.¹⁰⁶ The mind is a self-organizing "classificatory apparatus"¹⁰⁷ (a spontaneous

¹⁰¹*Ibid*, 6.

¹⁰²Hayek uses these terms to describe advanced civilized societies characterized by an extensive division of labor and knowledge and integrated by common economic, legal, and moral practices. Modern liberal society is, of course, a Great Society in the Hayekian sense.

¹⁰³"Kinds of Rationalism," *Studies*, 87.

¹⁰⁴"The Errors of Constructivism," *New Studies*, 21.

¹⁰⁵*Mirage*, 27. "There is in fact no reason to expect that the selection by evolution of habitual practices should produce happiness." *The Fatal Conceit*, 64.

¹⁰⁶*Ibid*, 17.

order) which enables man to classify (and thus perceive¹⁰⁸) phenomena according to certain salient aspects. The mind, in short, "does not so much make rules as consist of rules. . . ." ¹⁰⁹

Hayek argues, moreover, that the nature of the mind insures that man always knows more than he can say, for "mental activity must always be guided by some rules which we are in principle not able to specify."¹¹⁰ Certain rules, he claims—those that "shape the [very] categories of our understanding"¹¹¹—must permanently elude conscious identification.

. . . [T]his would follow from . . . the theory of sets. . . . [I]n any system of classification [such as the mind] there are always more classes than things to be classified, which presumably implies that no system of classes can contain itself.

.....
It would thus appear that Godel's theorem is but a special case of a more general principle applying to all conscious and particularly all rational processes, namely the principle that among their determinants there must always be some rules which cannot be stated or even be conscious.¹¹²

¹⁰⁷Kukathas, 49.

¹⁰⁸According to Hayek, the simultaneous imposition of many classificatory rules results in what we term perception. ". . . [A]ll sensations, perceptions, and images are the product of a superimposition of many 'classifications' of the events perceived according to their significance in many respects." "The Primacy of the Abstract," *New Studies*, 36.

"Our perception of the external world is made possible by the mind possessing an organizing capacity." *Ibid*, 38.

¹⁰⁹*Rules and Order*, 18.

¹¹⁰Hayek, cited in Gray, *Hayek on Liberty*, 22.

¹¹¹*Ibid*, 23.

¹¹²*Ibid*, 22. See also "Rules, Perception, and Intelligibility," *Studies*, 61.

Or, as Don Lavoie explains it, "The very process by which an articulated statement is formulated must itself remain inarticulate. If an attempt is made to articulate this process, then the process by which that attempt is made remains inarticulate."¹¹³

This is an important component of Hayek's theory of the mind, for, if true, it means that "[c]onscious thought must be presumed to be governed by . . . a supra- or meta-conscious mechanism which operates on the contents of consciousness but which cannot itself be conscious."¹¹⁴ Hayek's point is that the nature of the mind permanently limits the degree to which we can consciously control human experience.

II. THE POSSIBILITIES OF REASON

Although Hayek is at pains to emphasize the significance of tradition, inarticulate rules, and custom to human experience, he does not wish to denigrate the importance of rational reflection. His aim, he tells us, is to "make reason as effective as possible, . . ."¹¹⁵ and this, he maintains, requires a recognition of reason's proper sphere of authority.

. . . [I]f our stress has . . . been necessarily on [the limits to reason,] we have certainly not meant to imply thereby that reason has no important positive task. Reason undoubtedly is man's most precious possession. Our argument is intended to show merely that it is not all-powerful and that the belief that it can become its own master and control its own development may yet destroy it. What we have attempted is a defense of reason against its abuse by those who do not understand the conditions of its effective functioning and continuous growth. It is an appeal to men to see

¹¹³D. Lavoie, "The Market as a Method for Discovery and Conveyance of Inarticulate Knowledge," John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments*, Volume IV (New York: Routledge, Chapman and Hall, Inc., 1991), 228.

¹¹⁴"Rules, Perception, and Intelligibility," *Studies*, 61. Certain rules are inaccessible to the conscious reasoning mind not because they are unconscious or subconscious, but because they "proceed on too high a level [of abstractness or generality]." *Ibid.*

¹¹⁵*Rules and Order*, 29.

that we must use our reason intelligently and that, in order to do so, we must preserve that indispensable matrix of the uncontrolled and non-rational which is the only environment wherein reason can grow and operate effectively.

. . . What is advocated here is not an abdication of reason but a rational examination of the field where reason is appropriately put in control.¹¹⁶

The Growth of Rationality

Hayek believes, then, that reason has a crucial role to play in human experience, and he is concerned to maintain the conditions which he considers indispensable to its further evolution. Because the mind is an evolving structure that develops only through its encounter with the realm of concrete experience, he argues, freedom of action is indispensable to the growth of rationality. Man became and becomes rational through experiencing the consequences of his actions; he does not and can not learn solely in the abstract. The development of rationality depends upon man's ability to experience for himself the disappointment and fulfillment of his expectations.¹¹⁷ "Freedom," in brief, "is necessary to make man rational."¹¹⁸

Contrary to the "overintellectualized conception"¹¹⁹ of certain political theorists, Hayek argues that "discussion, . . . though . . . essential . . . is not the main process by which people learn. Their views and decisions are formed by individuals acting according to their own designs; and they profit from what others have learned in their individual

¹¹⁶*Constitution*, 69.

¹¹⁷"Man learns by the disappointment of expectations." *Constitution*, 30.

¹¹⁸Kukathas, 140.

¹¹⁹*Constitution*, 110.

experience."¹²⁰ For Hayek, knowledge is preeminently practical, embodied in concrete tools, customs, and habits, as well as in abstract rules, symbols, and inarticulate "techniques of thought."¹²¹ His views on the growth of rationality are very close to Karl Popper's views on the growth of scientific knowledge: both ". . . must be conceived as an interpersonal process in which everyone's contribution is tested and corrected by others."¹²² Like scientific hypotheses, the products of reason must be considered tentative and provisional, conjectures that can be refuted but never proven or conclusively demonstrated. Moreover, reason, like science and like civilization itself, advances only by grappling with the unknown and the unpredictable. Consequently, "the only environment wherein reason can grow and operate effectively . . . [is the] indispensable [realm] of the uncontrolled and non-rational"¹²³

If we were to restrict action to only that in accord with some preferred conception of the "rationally permissible,"¹²⁴ we would, Hayek argues, smother the spontaneous trial-and-error process whereby reason and civilization advance. "We might conceive of a civilization coming to a standstill, not because the possibilities of further growth had been exhausted, but because man had succeeded in so completely subjecting all his actions and his immediate surroundings to his existing state of knowledge that there would be no occasion for new knowledge to appear."¹²⁵ The endeavor to rationalize the social

¹²⁰*Ibid.*

¹²¹Lavoie, 45.

¹²²*The Counter-Revolution of Science*, 61.

¹²³*Constitution*, 69.

¹²⁴Kukathas, 139

¹²⁵*Constitution*, 38.

order¹²⁶—to subject the social process to deliberate conscious control—must induce the stagnation and ultimately the decline of both human intelligence and civilized society. Reason, Hayek warns, "is like a dangerous explosive which, handled cautiously, may be most beneficial, but if handled incautiously may blow up a civilization."¹²⁷

*The Primacy of the Abstract*¹²⁸

Hayek is impressed by the fact that the human mind is so very limited. Man cannot foresee the future with any degree of certitude. He may not clearly recognize his own values, purposes, or ends, ends which must, moreover, continually change in response to changing circumstances. Worst of all and most significant to Hayek, man is incurably ignorant of most of the concrete facts and circumstances prevailing in his environment—his mind is simply incapable of grasping reality in all its infinite concrete complexity.¹²⁹ Despite these facts, he must somehow determine "how to act" and "what to do" within this complex environment. How is this accomplished?

According to Hayek, man survived and flourished¹³⁰ because he evolved a mind adapted to the kind of environment in which he dwells, a mind, as we have noted, that operates to classify (and thus perceive and manipulate) phenomena according to certain abstract aspects. Abstractness, Hayek tells us, is not exclusively a property of conscious thought or mental concepts. It is, rather, "a characteristic possessed by all the processes

¹²⁶And not merely to develop individual rationality

¹²⁷*Ibid*, 94.

¹²⁸"The Primacy of the Abstract," *New Studies*, 35-49.

¹²⁹*Rules and Order*, 13.

¹³⁰Again, in terms of the criteria discussed in "The Process of Cultural Evolution"

which determine action long before they appear in conscious thought or are expressed in language[:] . . . Whenever a *type* of situation evokes in an individual a *disposition* toward a certain *pattern* of response, that basic relation which is described as 'abstract' is present."¹³¹ Abstractness thus conceived is a property of all thought, perception, and action.

Abstractness, moreover, is not a quality produced by means of induction or inspection of concrete phenomena: we do not *abstract from* a myriad of concrete phenomena and subsequently derive abstractions such as truth, justice, danger, happiness, and so on. Hayek suggests, on the contrary, that abstractness or generality is "primary"¹³² to the experience of concreteness (the secondary or derived phenomenon). As he puts it:

Abstraction is not something which the mind produces by processes of logic from its perception of reality, but rather a property of the categories with which it operates—not a product of the mind but rather what constitutes the mind. We never act, and could never act, in full consideration of all the facts of a particular situation, but always by singling out as relevant only some aspects of it; not by conscious choice or deliberate selection but by a mechanism over which we do not exercise deliberate control."¹³³

This mechanism, Hayek believes, is the outcome of a process of evolutionary selection. The capacity to structure experience by means of abstract concepts and rules is an adaptation that allows man to orient himself in a world most of whose concrete particulars must remain forever unknown to him. It is an evolved solution to problems that stem from the fact that man's mind is incapable of fully mastering or comprehending the infinite complexity of concrete phenomena which comprise the human environment.

¹³¹*Ibid*, 30.

¹³²"The Primacy of the Abstract," *New Studies*, 35-49.

¹³³*Rules and Order*, 30.

Hayek wishes to emphasize, then, that reason is only competent in the realm of the abstract: ". . . [W]hen we say what all men have in common is their reason we mean their common capacity for abstract thought."¹³⁴ Reason and abstraction do permit us to achieve a degree of mastery over experience, a mastery which extends, however, only to certain general features of our environment and experience. "[A]bstractions help our reason go further than it could if it tried to master all the particulars,"¹³⁵ but, according to Hayek, *our constitutional inability to foresee all the extended ramifications of our actions or to take into account all the concrete circumstances which determine their outcome necessarily restricts the degree of control we can exercise over the concrete manifestation of the social order.*

. . . [T]he incurable ignorance of everyone . . . is the ignorance of particular facts which are or will become known to somebody and thereby affect the whole structure of society. This structure of human activities constantly adapts itself, and functions through adapting itself, to millions of facts which in their entirety are not known to anybody . . . It [is] one of our chief contentions that most of the rules of conduct which govern our actions, and most of the institutions which arise out of this regularity, are adaptations to the impossibility of anyone taking conscious account of all the particular facts which enter into the order of society.¹³⁶

.....
The use of abstraction extends the scope of phenomena which we can master intellectually[;] it does so by limiting the degree to which we can foresee the effects of our actions, and therefore also by limiting to certain general features the degree to which we can shape the world to our liking. Liberalism, *for this reason*, restricts deliberate control of the overall order of society to the enforcement of such general rules as are necessary for the formation of a spontaneous order, the details of which we cannot foresee.¹³⁷

¹³⁴ *Rules and Order*, 33.

¹³⁵ *Ibid.*

¹³⁶ *Ibid*, 13.

¹³⁷ *Ibid*, 32.

We have discussed the nature of abstraction at some length because, in my opinion, the refusal to recognize that reason, by itself, is powerless to determine concrete particulars and thus to devise an appropriate *concrete* pattern for a complex society lies at the heart of constructivism.¹³⁸ Hayek's fundamental contention is that reason can not, *by itself*, either determine particular concrete ends that persons should "collectively" pursue or consciously coordinate the concrete affairs of the inhabitants of an advanced society.¹³⁹

We shall return to this issue when we examine the character of Hayekian constructivism more closely. For now, we note that, for Hayek, classical liberalism's reliance on guidance by abstract principles and the restrictions this places on the content of law and policy in liberal society stem from inherent limitations of the human mind. His thesis is that abstract liberal political principles and rules of justice are, like abstract moral rules, adaptations to man's permanent epistemological predicament¹⁴⁰—to the fact that "... human intelligence is quite insufficient to comprehend all the details of the

¹³⁸As we mentioned, several critics have challenged the usefulness of Hayek's constructivist/critical rationalist classificatory scheme. I shall argue that Hayek's division makes sense when understood in terms of attitudes toward abstractness and reason's ability to determine the concrete.

¹³⁹There is, of course, a relationship between the abstract and the concrete, but, on Hayek's view, it is the inverse of the usual conception. The concrete, he suggests, presupposes the abstract: the perception of the concrete is a function of the mind's ability to classify phenomena according to certain abstract aspects. See "The Primacy of the Abstract," *New Studies*, 35-49. The perception and evaluation of concrete phenomena, then, necessarily varies with the different beliefs, values, and circumstances of the perceiving individuals. Value, for instance, does not inhere in external phenomena but is attributed to them by a perceiving mind. The subjective theory of value is one of the cornerstones of the Austrian School in which Hayek was trained. See G. B. Madison, "Hayek and the Interpretive Turn," *Critical Review* (Spring 1989): 174-176.

¹⁴⁰"The fact of our irremediable ignorance of most of the particular facts which determine the processes of society is . . . the reason why most social institutions have taken the form they actually have." *Ibid*, 13.

complex human society. . . . [According to Hayek,] . . . it is this inadequacy of our reason to arrange such an order in detail which forces us to be content with abstract rules . . .
 . "141—on his view, the only type of legal rule that can sustain a liberal order (see Appendices A and B).¹⁴²

Liberal Principles are "Moral Rules for Collective Action"¹⁴³

According to Hayek, moral rules (such as the attribution of free will and responsibility) are "devices"¹⁴⁴ man has stumbled upon to make the limited rationality he does possess "go as far as possible."¹⁴⁵ We hold persons responsible because we hope to influence their behavior in the future, to encourage them to "act more rationally than they otherwise would."¹⁴⁶ Similarly, we allow persons to reap or bear the consequences of their actions so they will rationally attend to the particular circumstances over which

¹⁴¹"Kinds of Rationalism," *Studies*, 88.

¹⁴²*Constitution*, 205-212; 234-44; 411. Although liberal principles and rules of law were not the product of conscious construction or enlightened invention, Hayek claims that reason (in the sense of rational insight) can comprehend the function such evolved phenomena perform in regard to the maintenance of the liberal order. He believes that experience, observation, and rational argument—science, in short—can inform our conscious understanding and commend allegiance to liberal rules and institutions. Hayek does not argue that abstract thought is more "rational" than our attitudes toward particular and concrete phenomena but that reason, by itself, can not determine the desirability of such particularities. Nor does he claim that it is more "rational" (in some absolute sense) to observe abstract liberal principles in our collective conduct than collectively to pursue concrete objects. It will only be rational to do so if we desire to preserve the liberal order. Only if we value that kind of order, in other words, will his appeal to rational understanding fall on fertile ground. As we noted, reason, for Hayek, is always a servant of ultimately nonrational phenomena (values, morals, impulses, and so on).

¹⁴³*Constitution*, 68.

¹⁴⁴*Rules and Order*, 29.

¹⁴⁵*Constitution*, 77.

¹⁴⁶*Ibid*, 76. ". . . [T]he assigning of responsibility does not involved the assertion of a fact. It is rather of the nature of a convention intended to make people observe certain rules." *Ibid*, 75.

they do have some control.¹⁴⁷ Hayek maintains, then, that many of our evolved social institutions are adaptations that both extend man's limited rationality and foresight and buffer the most severe or dangerous consequences of their inadequacy.

Most of the rules of conduct which govern our actions, and most of the institutions which arise out of this regularity, are adaptations to the impossibility of anyone taking conscious account of all the particular facts which enter into the order of society. . . . Rules are a device for coping with our constitutional ignorance. There would be no need for rules among omniscient people who were in agreement on the relative importance of all the different ends. Any examination of the moral or legal order which leaves this fact out of account misses the central problem. . . . Rules of conduct [are] . . . a means for overcoming the obstacle presented by our ignorance of the particular facts which . . . determine the actions of all the several members of human society.¹⁴⁸

Hayek argues, moreover, that liberal political principles (limited government, individual liberty, private property, contract, equality under the law, and so on) should be conceived as evolved "moral rules for collective action." Such principles, like moral rules and like reason, serve an essentially negative function: to tell us what we must refrain from doing if we wish to prevent undesirable consequences.¹⁴⁹ Such evolved social phenomena are, one may say, the distilled essence of the practical knowledge and

¹⁴⁷*Ibid.*, 71-78.

¹⁴⁸F. A. Hayek, *Law, Legislation, and Liberty*, Volume 2, *The Mirage of Social Justice* (Chicago: The University of Chicago Press, 1976), 8, 12-13.

¹⁴⁹For instance, the destruction of the social order; perpetual strife, conflict, chaos; violence; the inability to adapt to changing circumstances; suppression of knowledge; stagnation; the inability to make long-range plans; the subjugation of the individual; and so on. "And in avoiding danger it is as important to know what one must never do as to know what one must do to achieve a particular result." *Rules and Order*, 18. It is not solely "reason," however, that informs our conviction that such phenomena are undesirable. The results of the experience of former generations are, on Hayek's view, embedded within the perceptual and moral rules which we unconsciously absorb throughout the process of enculturation. Parents teach their children that it is wrong to destroy or steal others' property, for instance. They do not necessarily do so because they consciously recognize that the delimitation of property rights is requisite to the formation of a coherent, peaceful order, but because their perception and behavior are governed by certain deeply ingrained traditional rules that have been preserved and transmitted precisely because they have proven indispensable to the maintenance of the social order.

experience gained by our predecessors, preserved and transmitted because they have proven in practice to contribute to the flourishing of the groups who observed them. Those that prevailed did so because they constituted a better adaptation to the kind of environment in which man dwells.

Just as a man, setting out on a walking tour, will take his pocket knife with him, not for a particular foreseen use but in order to be equipped for various possible contingencies, or to be able to cope with kinds of situations likely to occur, so the rules of conduct developed by a group are not means for known particular purposes but adaptations to kinds of situations which past experience has shown to recur in the kind of world we live in. Like the knowledge that induces one to take his pocket knife with him the knowledge embodied in the rules is knowledge of certain general features of the environment, not knowledge of particular facts. In other words, appropriate rules of conduct are not derived from explicit knowledge of the concrete events we will encounter; rather, they are an adaptation to our environment, an adaptation which consists of rules we have developed and for the observance of which we will usually not be able to give adequate reasons. In so far as such rules have prevailed because the group that had adopted them was more successful, nobody need ever have known why that group was successful and why in consequence its rules became generally adopted.¹⁵⁰

On "Automatic" v. Conscious Co-ordination of Social Affairs

Before we proceed to examine the character of the two "kinds of rationalism" Hayek identifies, we should discuss, however briefly, the two methods whereby the actions of individuals and groups within a society may be co-ordinated: 1) the "automatic" and spontaneous co-ordination effected by the "market mechanism";¹⁵¹ and

¹⁵⁰ *Mirage*, 5.

¹⁵¹ *The Fatal Conceit*, 19.

2) the conscious and deliberate arrangement effected by directing the particular actions of the individuals and the groups in accordance with a preconceived "plan."¹⁵²

The "market," of course, is a metaphor for a complex of social relations, institutions, and practices. Hayek's thesis is that such phenomena are evolved solutions to the "central problem"¹⁵³ any advanced society must solve: how to generate, utilize, and co-ordinate knowledge which *only and always* exists fragmented and dispersed among the numerous members of any complex society. Indeed, the "price system"¹⁵⁴ should be conceived as an evolved "medium of communicati[on]"¹⁵⁵ that serves both to bypass man's ignorance of most of the facts that determine the success of his actions (the

¹⁵²Hayek recognizes, of course, that Western liberal societies are today ordered by a combination of these two methods. He maintains, however, that the two distinct ordering principles are opposing and irreconcilable and that their simultaneous application cannot engender a stable, enduring, or coherent overall order. One of Hayek's contentions is that piecemeal "interventions" designed to "rectify" or "improve" the results of the spontaneous ordering process establish precedents which legitimize demands for the further extension of whatever "principle" can be discerned in the former "intervention." If the coal miners' incomes are to be protected, why not steel workers', cab drivers', secretaries, and so on? But, of course, we can not simultaneously "protect" all established positions and maintain the spontaneous order of liberal society. For Hayek, a "little bit" of political "intervention" or conscious control is not harmless; it establishes precedents and "produces . . . an alteration in the character of the people" ("*The Road to Serfdom* after Twelve Years," *Studies*, 224) which lead to the gradual transformation of the liberal order into an ever-more-totalitarian organization. *Rules and Order*, 3, 114; "*The Road to Serfdom* After Twelve Years," *Studies*, 216-228.

¹⁵³*Constitution*, 25. ????

¹⁵⁴As we have discussed, Hayek contends that the use of abstraction enables man to overcome his inability to master the infinite complexity of the environment. The price system is one of those evolved social institutions that serves to bypass the inherent limitations of the mind and permits persons to orient themselves in a world most of whose concrete detail they cannot know. *Mirage*, 113, 116. "Modernity is the result of man's increasing ability to communicate abstract thought." The "market"—the "negative feedback" mechanism "steered" by the information precipitated in prices—is the means whereby such communication is effected. "Competition as a Discovery Procedure," *New Studies*, 187, and *Mirage*, 125.

¹⁵⁵*Mirage*, 125.

concrete circumstances prevailing throughout society) and to integrate the actions of individuals and groups into a coherent overall order.¹⁵⁶

Hayek's argument is that the cultural achievements of Western civilization are not the product of superior knowledge *per se* but of the fact that Western society evolved a method of coordination (the "market mechanism") that encourages the generation and utilization of more knowledge than any other method yet discovered. No mind or group of minds could consciously assimilate or coordinate the vast knowledge and information that daily enters the social process *via* the market mechanism.¹⁵⁷ The "automatic" coordination achieved via the market process is, in short, far superior to any method based upon conscious direction. Conscious direction ("planning") must necessarily restrict the knowledge employed to that possessed by a few limited minds and thus prevent that flexible adaptation to ever-changing concrete circumstances whereby the order as a whole maintains itself (see Appendix A). As we shall see, for Hayek, the constructivist

¹⁵⁶Prices, Hayek tells us, are the indispensable guide to action. Without such guidance, persons could not know how to employ their efforts in a manner compatible with the plans and actions of their fellows. Without the guidance of prices, human activity would have to be directed by conscious command (our need for "things" would not disappear if the market were to disappear). Only the evolution of the price system, in other words, permitted persons to choose the direction of their efforts. Moreover, we cannot know how resources "should" be employed without the guidance of undistorted prices that reflect the reality of current circumstances. *Ibid*, 69-72.

Needless to say, explicating the theory of the market order (or *catalactics*, as Hayek terms it) is beyond the scope of this study. We shall merely point out that, for Hayek, the distinction between constructivist and critical rationalism is related to the distinction between conscious and automatic coordination of social affairs as represented by the concepts of "planning" and the "market," respectively. See F. A. Hayek, *Individualism and Economic Order* (Chicago: The University of Chicago Press, 1948).

¹⁵⁷This is not the complete story, however. Much of the knowledge and information that enters the market process is of a kind that cannot be consciously communicated or articulated. Knowledge is a very broad term for Hayek. It consists not merely in explicit, systematized, theoretical knowledge but in the inarticulate knowledge embodied in "techniques of thought," habits, dispositions, and customs, as well as in the fleeting local knowledge of time and place whose utilization is so essential in a complex social order. Lavoie, 213.

perspective is characterized by an inability or unwillingness to recognize the "astonishing fact . . . that order generated without design can far outstrip plans men consciously contrive."¹⁵⁸

III. CONSTRUCTIVIST RATIONALISM

Hayek's argument, as we have mentioned, is primarily directed against certain epistemological views that he associates with the philosophy of Rene Descartes and the Enlightenment, views he labels "constructivist rationalism." For Hayek, the constructivist mentality is characterized by: 1) belief in a socially autonomous human reason capable of designing civilization and culture;¹⁵⁹ 2) a radical rejection of tradition and conventional behavior; 3) a tendency toward animistic or anthropomorphic thinking; and 4) the demand for rational justification of values.¹⁶⁰

The "core of constructivism, [Hayek maintains, is] . . . a general mental attitude, a demand for an emancipation from all prejudice and all beliefs which could not be rationally justified, [an attitude perhaps] best express[ed] by B. de Spinoza's statement that 'he is a free man who lives according to the dictates of reason alone'."¹⁶¹ According to Hayek, this cast of mind leads constructivists to attribute (perhaps implicitly) both the orderly structure apparent in society and the origin of social institutions to deliberate human

¹⁵⁸*The Fatal Conceit*, 8.

¹⁵⁹A conception, Hayek notes, that is closely related to Cartesian mind/body dualism. *Rules and Order*, 17.

¹⁶⁰*Rules and Order*, 8-11; and "The Errors of Constructivism," *New Studies*, 3-22.

¹⁶¹"Liberalism," *New Studies*, 120. Hayek also quotes Alexander Herzen's remark—"You want a book of rules, while I think that when one reaches a certain age one ought to be ashamed of having to use one [because] the truly free man creates his own morality" (*Rules and Order*, 25)—to illustrate the constructivist attitude.

invention or rational design. Unable to conceive of social order as the product of impersonal social forces, the constructivist, like the primitive, tends to ascribe all evident order to the design of a personal orderer and is frequently led more or less consciously to personify the concept of "society"—to impute blame, responsibility, and purposefulness to an abstract mental construct.¹⁶² Such naive or animistic thinking, Hayek claims, is characteristic of all schools of totalitarian, socialist, and interventionist political thought.¹⁶³

"All modern forms of constructivism,"¹⁶⁴ he maintains, derive from the rationalism of Rene Descartes, whose "radical doubt"¹⁶⁵ led him to deny the status of truth to any statement that could not be logically derived from irrefutable premises.¹⁶⁶ Descartes's many influential followers interpreted his views in a manner that led them to perceive traditional values, institutions, and customs as the very embodiment of ignorance. Recognizing, of course, that such phenomena could not be rationally justified in accordance with the canons of Cartesian methodology, they concluded that inherited social institutions and conventions were more often impediments than aids to human flourishing. "If you

¹⁶²*Rules and Order*, 9; *Mirage*, 75-79.

¹⁶³"Kinds of Rationalism," *Studies*, 85.

¹⁶⁴"The Errors of Constructivism," *New Studies*, 5.

¹⁶⁵*Rules and Order*, 10.

¹⁶⁶It has been suggested that Hayek himself "subscribes to a [Cartesian] view of truth and then reach[es] the conclusion that there is no truth known to humans" (Dr. Ellis M. West, written comments, August, 1993). I believe, however, there is a significant distinction between the Hayekian and Cartesian positions. Perhaps the main difference is that Hayek holds the traditional presumption in favor of established social institutions and practices—he does not reject them out of hand because we may not understand their rationale or purpose. He is even willing to grant certain "nonfactual . . . religious . . . beliefs" (*The Fatal Conceit*, 135-36) the status of "symbolic truths" (*Ibid*, 137). I would argue, then, that the character of Hayek's "doubt" is very different from that of the Cartesian rationalist—his inclines toward acceptance rather than rejection of the nondemonstrable. Moreover, Hayek does believe in the existence of truth—"facts that transcend historical context" (*Ibid*, 86). Nevertheless, truth does remain, to his mind, provisional and ever open to refutation.

want good laws," counseled Voltaire, "burn those you have and make new ones."¹⁶⁷

And it was Reason, these Enlightened thinkers proclaimed, which would liberate mankind from the ancient fetters of oppressive tradition.

The constructivists' cavalier dismissal of "irrational" tradition, then, is typically accompanied by a profound belief in the constructive powers of human reason. If mankind has created society, runs this train of thought, then it must be able to alter its institutions at will to achieve desired aims. If society is indeed our joint creation, then surely we can improve the existing order by better design!¹⁶⁸ Constructivists believe, either implicitly or explicitly, that only those social institutions whose origin, purpose, and manner of operation are fully accessible to the reasoning mind deserve the approval of rational beings. Through their eyes, the spontaneous and undesigned appear as hardly more than irrational chaos.

Constructivism, of course, maintains a firm hold on the contemporary mind. "Intellectuals," in particular, reserve a special affection for all that is "rational," "conscious," or "deliberate" in contrast to the "irrational," "conventional," or seemingly accidental.¹⁶⁹ Moreover, the traditional presumption in favor of established social institutions and practices has long been abandoned in favor of the "more glamorous"¹⁷⁰ view that social phenomena should and can be subjected to rational control and deliberate

¹⁶⁷*Ibid*, 25.

¹⁶⁸" . . . [S]ince people had been able to generate some system of rules coordinating their efforts, [constructivists concluded that] they must also be able to *design* an even better and more gratifying system." *The Fatal Conceit*, 7.

¹⁶⁹*Ibid*, 11. "The influence of rationalism has indeed been so profound and pervasive that, in general, the more intelligent an educated person is, the more likely he or she now is . . . to be a rationalist" *The Fatal Conceit*, 52-53.

¹⁷⁰*Rules and Order*, 9.

arrangement. The insight that there are limits to the extent to which we can consciously determine the particular manifestation of a given social order is rejected by "naive"¹⁷¹ rationalists in favor of an overweening "reason" that believes itself able to create society in whatever image it chooses.

Hayek argues, however, that the constructivists' vision blinds them to perceiving the true nature of social reality. Constructivists not only wrongly assume that fully developed human reason existed prior to social experience and directed man's cultural advance, but they are susceptible to what Hayek terms the "synoptic delusion[:] . . . the fiction that all relevant facts can be known to one mind and that it is possible to construct from this knowledge of the particulars a desirable social order."¹⁷² Misunderstanding both the origin of social institutions and the nature of reason, constructivists are led to advocate rules and policy inappropriate to liberal society, for, according to Hayek, the question of how our order came into being has everything to do with the kind of laws and policy conducive to its ongoing vitality.¹⁷³

¹⁷¹Hayek, following Karl Popper, sometimes characterizes constructivism as a "naive rationalism." *Rules and Order*, 29.

¹⁷²*Ibid*, 14.

¹⁷³*The Fatal Conceit*, 6-7. Hayek maintains that ignorance of the origin of law (the evolved rules of just conduct that result from the articulation of pre-existing practice) leads to the erroneous positivistic conception that any rule passed by a formal "legislative" body is valid law. Hayek claims, however, that the evolved rules of justice that induced and maintain the spontaneous order of liberal society possess specific attributes which legislation—the deliberate construction of rules—will only possess if it is consciously modeled on the law. On his view, lack of understanding of the nature, function, and attributes of valid law engenders misguided legislation that must destroy the abstract framework of rules requisite to the operation of the liberal order. *Rules and Order*, 114. Also see Appendices A and B.

The Demand for Rational Control

For two hundred years, the ideas inherited from the Age of Reason seized the imagination of political theorists and reformers of various persuasions while the more sober and modest insights of the evolutionary theorists were largely ignored.¹⁷⁴ To "organiz[e] . . . society as a whole,"¹⁷⁵ rationally to construct a new and better world, to replace or "correct" the allegedly chaotic and irrational "market" process by the scientific or rational "distribution" of resources—at long last consciously to direct the course of human evolution—such have been the characteristic ambitions of social reformers throughout the modern era.

According to Hayek, all forms of modern totalitarianism and collectivism—from the crudest communism to Fabianism to the "hot" socialism and Fascist corporativism of the '20s and '30s, through the recurring demands for "social justice" and contemporary calls for "managed competition"—derive their inspiration from the belief that reason and conscious direction can produce a more "rational" (and thus superior) allocation of resources than that achieved by the automatic and spontaneous forces of the "market."¹⁷⁶

Hayek argues, however, that the demand for rational, conscious ("political") control of the concrete particulars of social life is based upon a misunderstanding of the process of cultural evolution and on a hubristic and dangerous overestimation of the capacity of the conscious reasoning intellect. Civilization, he maintains, is not the creation of the

¹⁷⁴*Rules and Order*, 9; *Constitution*, 55.

¹⁷⁵*Ibid*, 53.

¹⁷⁶*The Counter-Revolution of Science*, 87; and *The Fatal Conceit*, 6-7.

reasoning mind, but the unintended outcome of the spontaneous play of innumerable minds within a matrix of "nonrational"¹⁷⁷ values, beliefs, and traditions.

The whole conception of man already endowed with a mind capable of conceiving civilization setting out to create it is fundamentally false. Man did not simply impose upon the world a pattern created by his mind. His mind is itself a system that constantly changes as a result of his endeavor to adapt himself to his surroundings. It would be an error to believe that, to achieve a higher civilization, we have merely to put into effect the ideas now guiding us. If we are to advance, we must leave room for a continuous revision of our present conceptions and ideals which will be necessitated by further experience. . . . The conception of man deliberately building his civilization stems from an erroneous intellectualism that regards human reason as standing outside nature and possessed of knowledge and reasoning capacity independent of experience.¹⁷⁸

Hayek argues, moreover, that ". . . the desire to make everything subject to rational control, far from achieving the maximal use of reason, is rather an abuse of reason based on a misconception of its powers, . . . [for t]rue rational insight into the role of conscious reason seems indeed to indicate that one of the most important uses is the recognition of the proper limits of rational control."¹⁷⁹ Such limits, as we have discussed, stem from the fact that reason is confronted by an immovable epistemological barrier: it is irremediably ignorant of "most of the particular facts which determine the actions of all the several members of human society."¹⁸⁰ The constructivist's main error, Hayek believes, is his refusal to recognize that "abstract concepts are a means to cope with the complexity of the concrete which our mind is not capable of fully mastering."¹⁸¹ He argues that the

¹⁷⁷Non-rational "[i]n the sense of explicitly entering into our reasoning [but not] . . . in the sense of being contrary to intelligent action." *Constitution*, 34.

¹⁷⁸*Ibid*, 23-24.

¹⁷⁹"Kinds of Rationalism," *Studies*, 93.

¹⁸⁰*Rules and Order*, 12.

¹⁸¹*Ibid*, 29.

"rationalist . . . revolt against reason is . . . usually directed against the abstractness of thought, [especially] against the submission to abstract rules"¹⁸² and is marked, moreover, by a passionate embrace of the concrete.

The illusion that leads constructivist rationalists to an enthronement of the will consists in the belief that reason can transcend the realm of the abstract and by itself is able to determine the desirability of particular actions. Yet it is always only in combination with particular, non-rational impulses that reason can determine what to do, and its function is essentially to act as a restraint on emotion, or to steer action impelled by other factors. The illusion that reason alone can tell us what to do, and that therefore all reasonable men ought to be able to join in the endeavor to pursue common ends as members of an organization, is quickly dispelled when we attempt to put it into practice. But the desire to use our reason to turn the whole of society into one rationally directed engine persists, and in order to realize it common ends are imposed upon all that cannot be justified by reason and cannot be more than the decisions of particular wills. . . .¹⁸³

.....
[This is because the] only common values of an open and free society are not concrete objects to be achieved, but only those common abstract rules of conduct that secure . . . the constant maintenance of an equally abstract order which merely assure[s] to the individual better prospects of achieving his individual ends but g[ives] him no claims to particular things. . . .¹⁸⁴

.....
Constructivist rationalism rejects the demand for the discipline of reason because it deceives itself that reason can directly master all particulars; and it is thereby led to a preference for the concrete over the abstract, the particular over the general, because its adherents do not realize how much they thereby limit the span of true control by reason.¹⁸⁵

Hayek's position runs counter to a well-established tradition in political theory which, though not as explicitly constructivistic as socialism, nevertheless shares its belief in the constructive powers of reason. Those who conceive politics to be an intrinsically

¹⁸²*Ibid*, 32-33.

¹⁸³*Ibid*.

¹⁸⁴*The Political Order of a Free People*, 164.

¹⁸⁵*Rules and Order*, 32-33.

ennobling and civilizing activity often argue that both the substantive content of liberal law and the common ends of political action should be determined by widespread participation in "rational" discussion and "reasoned debate."¹⁸⁶ Hayek insists, on the contrary, that no amount of "rational dialogue" can generate the knowledge requisite to the accomplishment of such tasks.

First, Hayek contends that the rules that structure liberal society are not the product of argument and reasoned debate but are determined by the "rationale"¹⁸⁷ and requirements of the liberal "system as a whole"¹⁸⁸ (see Appendices A and B). Although we may debate whether or not we desire to live in a liberal society, once we are committed to that kind of order, our choice of rules is severely circumscribed, for Hayek believes "there may exist just one way to satisfy certain requirements for forming an extended order . . ."¹⁸⁹ such as modern liberal society.

Second, we do not possess and can not acquire knowledge of the innumerable and ever-changing facts and circumstances which we would need to know in order to determine the concrete ends all "ought" to pursue. Regardless of how disinterested, just, intelligent, and altruistic we all may be, we can never rationally design a non-arbitrary hierarchy of concrete ends, for the ends that persons "should" pursue¹⁹⁰ depend upon

¹⁸⁶Cf. Laurent Dobuzinskis, "The Complexities of Spontaneous Order," *Critical Review*, (Spring 1989): 253-54; and Brian Lee Crowley, *The Self, the Individual and the Community: Liberalism in the Thought of F. A. Hayek and Sidney and Beatrice Webb* (Oxford: Clarendon Press, 1987).

¹⁸⁷The "rationale" of the liberal order is, for Hayek, essentially an epistemological one: liberal institutions encourage the generation and utilization of knowledge (explicit, inarticulate, practical, and which only and always exists in a dispersed and fragmented form. *Mirage*, 9.

¹⁸⁸*Rules and Order*, 101.

¹⁸⁹*The Fatal Conceit*, 17.

¹⁹⁰From the perspective of the both the fulfillment of individual plans and the long-term good of society as a whole

concrete facts and circumstances (relative values and scarcities) which no human mind or group of minds can grasp.¹⁹¹ "Rational" concrete patterns can only be continually rediscovered as persons employ their (tacit and explicit) knowledge to adapt to the peculiar circumstances encountered within their local environments.¹⁹²

The crucial fact of our lives is that we are *not* omniscient, that we have from moment to moment to adjust ourselves to new facts which we have not known before, and that we can therefore not order our lives according to a preconceived detailed plan in which every particular action is beforehand rationally adjusted to every other. . . . Since our whole life consists in facing ever new and unforeseeable circumstances, we cannot make it orderly by deciding in advance all the particular actions we shall take

. . . .¹⁹³

Moreover, there exists no general principle by which we may objectively determine the relative importance of conflicting concrete ends.¹⁹⁴ Hayek argues that no amount of "rational discussion" can produce agreement on the particular *concrete* manifestation our complex social order "should" assume if such agreement is "not already present at the outset."¹⁹⁵ To compel persons to serve some hierarchical scale of concrete ends in the name of "rationality" (or for any other reason) can only mean that "common ends are

¹⁹¹*Mirage*, 114-117.

¹⁹²A "rational" concrete pattern would be one based upon comprehensive utilization of all the knowledge of particular conditions dispersed throughout a society, knowledge which is simply unavailable as a whole to anyone.

¹⁹³"Kinds of Rationalism," *Studies*, 90.

¹⁹⁴Hayek repeatedly refers to Kant's observation that "[w]elfare has no principle, neither for him who receives it, nor for him who distributes it, (one will place it here and another there); because it depends on the material content of the will, which is dependent upon particular facts and therefore incapable of a general rule." Immanuel Kant, *Kant's Political Writings*, ed. H. Reiss, trs. H. B. Nisbett (Cambridge, 1970), 183; cited in *The Fatal Conceit*, 75.

¹⁹⁵*Rules and Order*, 34.

imposed upon all that cannot be justified by reason and cannot be more than the [arbitrary] decisions of particular wills."¹⁹⁶

Hayek argues, moreover, that all we truly have in common with our fellows in a Great Society is knowledge of certain *abstract* features of our social and physical environment. We share knowledge of the *kind* of clothing we wear, the *kind* of food we eat, the *kind* of entertainment we enjoy, and so on.¹⁹⁷ Most of the particular facts and circumstances that determine the concrete shape of our fellows' lives in the spatially extensive modern liberal order are and must forever remain unknown to us. Abstract rules prevailed precisely because they served to bypass these epistemological barriers and thus allowed the formation of an extended order that utilizes and coordinates more knowledge and information than is surveyable or accessible to any individual or group.¹⁹⁸

To ignore these epistemological considerations is, on Hayek's view, to ignore or misunderstand the "whole rationale"¹⁹⁹ of liberal institutions. "All institutions of freedom [law, markets, money, morals] are adaptations to [the] fundamental fact of ignorance,"²⁰⁰ to the necessary limits of the human mind. If we somehow knew the "best"²⁰¹ concrete manifestation a Good Society would assume, Hayek suggests, the

¹⁹⁶*Rules and Order*, 32. As Norman Barry puts it, "The real question for the social philosopher is whether the individual should be guided in his actions by those immediate consequences which he can know of, and influence, or whether he ought to be made to do what seems appropriate to somebody else who is supposed to possess a fuller comprehension of the significance of these actions to 'society as a whole'." *Hayek's Social and Economic Philosophy*, 9.

¹⁹⁷*Mirage*, 11-12.

¹⁹⁸*Ibid.*

¹⁹⁹*Ibid.*, 9.

²⁰⁰*Constitution*, 30.

²⁰¹Or even an appropriate concrete pattern, for that matter

case for liberal institutions would vanish.²⁰² If indeed there existed omniscient entities who could direct each person's activities toward his own and others' best fulfillment, we would not require the trial-and-error process whereby we *discover* the pursuits that fulfill our values (and what, in fact, those values are).²⁰³ Fulfillment—the good of all— cannot be planned in the abstract. Only those who have succumbed to the "synoptic delusion" could, Hayek argues, overlook this fundamental fact.²⁰⁴

IV. EVOLUTIONARY OR CRITICAL RATIONALISM

The liberal tradition that Hayek wishes to contrast with the constructivistic tradition and that he himself represents is rooted in the Scottish Enlightenment. According to Hayek, the liberalism he espouses ". . . derives from the discovery of a self-generating [or spontaneous] order in social affairs."²⁰⁵ Spontaneous-order theory was first elaborated by thinkers such as David Hume, Adam Ferguson, and Adam Smith and significantly developed by Carl Menger and his followers in the Austrian School.²⁰⁶ Such theory endeavors to explain how social order emerges, in Ferguson's famous phrase, as ". . . a result of human action, but not . . . of . . . human design"²⁰⁷—how a stable abstract pattern of social relations may emerge as the unintended by-product of human interaction.

²⁰²*Constitution*, 29.

²⁰³*Mirage*, 9-10.

²⁰⁴"Kinds of Rationalism," *Studies*, 90.

²⁰⁵F. A. Hayek, "The Principles of a Liberal Social Order," *Studies in Philosophy, Politics, and Economics* (Chicago: The University of Chicago Press, 1967), 162. See Appendix A for a discussion of the nature of a Hayekian spontaneous order.

²⁰⁶Including, of course, Hayek himself

²⁰⁷Adam Ferguson, cited in "The Results of Human Action but Not of Human Design," *Studies*, 96.

In so doing, it explores the significance of the fact that humans are as much rule-governed as purposive agents and that systematized, explicit, articulated knowledge is but the "crowning part of [the] edifice"²⁰⁸ of human knowledge.

This tradition is characterized, moreover, by an evolutionary perspective which conceives social institutions and practices—law, morals, money, the market mechanism, habits, language—not as products of conscious construction or enlightened invention but of a supra-rational trial-and-error process of cultural evolution. From such a perspective, traditions, customs, and the entire panoply of human convention do not appear as mere arbitrary and irrational prejudices cavalierly to be abandoned in the quest for rational control over social forces. Not only do inherited practices embody a "superindividual wisdom"²⁰⁹ acquired through the practical experience of former generations, but, what is equally important, the observance of many of these nonrational conventions is indispensable to the formation and maintenance of the social order.²¹⁰

Hayek argues, then, that traditional liberal rules²¹¹ and institutions, as well as reason, abstract thought, and the structure of the mind itself, should be understood as evolutionary adaptations to certain irremediable circumstances²¹² of human existence, selected, at bottom and over the long run, in accordance with their human survival-value. However difficult to discern, those traditional values and rules whose observance

²⁰⁸*Constitution*, 33.

²⁰⁹*Ibid*, 110.

²¹⁰*Ibid*, 61-63.

²¹¹Loosely, those "repressive or inhibitory" rules of conduct associated with the Judeo-Christian and classical liberal traditions. *The Fatal Conceit*, 1988), 18.

²¹²For instance, essentially dispersed knowledge, limited foresight, scarcity, and the infinite complexity of social and physical reality

generated modern liberal society serve a function in regard to the maintenance of that kind of order; and, Hayek believes, we abandon them at the price of civilized order and perhaps survival itself.²¹³

As we have mentioned, the conception of reason that Hayek wishes to repudiate is that which conceives reason as an autonomous faculty standing outside the cosmos of nature and capable of judging society and human action in general from a "higher point of view."²¹⁴ Such a conception leads not only to the "synoptic delusion" mentioned previously, but to certain beliefs regarding the appropriateness of action, beliefs which boil down to the idea that "action, if it is to be rational, must be deliberate and foresighted."²¹⁵ The Hayekian constructivist, in other words, is convinced that it is unreasonable to take any action unless one "knows what one is doing"—unless one can consciously identify the purpose of an action and both foresee and desire the consequences that ensue. Or, as a noted contemporary political theorist puts it, "A rational being is purposive, deliberate, and autonomous."²¹⁶

For Hayek and his intellectual forebears, on the contrary, man is more "lazy, . . . improvident,"²¹⁷ and "short-sighted . . ."²¹⁸ than he is rational and purposive. On their

²¹³One of the themes of Hayek's later work, especially pronounced in *The Fatal Conceit*, is that only the liberal market order is capable of sustaining the vast numbers of persons presently alive. "I do claim that . . . if we discard these traditions, out of ill-considered notions . . . of what it is to be reasonable, we shall doom a large part of mankind to poverty and death. . . ." *The Fatal Conceit*, 27.

²¹⁴The Errors of Constructivism," *New Studies*, 20.

²¹⁵*The Fatal Conceit*, 71.

²¹⁶Thomas A. Spragens, Jr., *Reason and Democracy* (Durham, NC: Duke University Press, 1990), 157.

²¹⁷*Constitution*, 61.

view, man has been "successful"²¹⁹ not because he is rational, but because he is guided in his actions by evolved rules and practices that supply the want of extensive individual rationality and foresight. Evolutionary theorists, as we noted, conceive inherited rules and social institutions as "bearers of . . . tacit knowledge,"²²⁰ knowledge which transcends that available to the conscious reasoning mind,²²¹ and not, we should note, as instruments that persons deliberately employ to achieve certain desired goals.²²² On Hayek's view, man does not possess the distance from rules implied by such an instrumental conception, for, as we have discussed, he conceives mind and personality as *constituted* by systems of rules, only some of which enter into explicit reasoning processes.

Although Hayek is highly critical of the rationalism that seeks to subject all social phenomena to deliberate rational control, he nevertheless is not a proponent of any sort of irrationalism; and he gives short shrift to demands of will, instinct, or desire.

. . . [M]y argument is in no way directed against reason properly used. By reason properly used I mean reason that recognizes its own limitations and, itself taught by reason, faces the implications

²¹⁸"The Legal and Political Philosophy of David Hume," *Studies*, 114.

²¹⁹*Mirage*, 5. That is, according to the criteria discussed in "The Process of Cultural Evolution"

²²⁰Gray, *Hayek on Liberty*, 42.

²²¹This is because the knowledge embedded in inherited institutions has been gained by many more trials-and-errors than any individual could gain.

²²²Again, man learns, for Hayek, more by a process of imitation, emulation, and the disappointment of expectations than by discursive reasoning. "Mind is not a guide but a product of cultural evolution, and is based more on imitation than on insight or reason" (*The Fatal Conceit*, 21). For instance, man did not deliberately choose to adopt the values and morals of the market because he foresaw the great benefits he would accrue: "Man has chosen [the liberal market order] only in the sense that he has learned to prefer something that already operated; and through greater understanding has been able to improve the conditions for its operation" ("Ludwig von Mises," *Fortunes*, 142).

of the astonishing fact . . . that order generated without design can far outstrip plans men consciously contrive.²²³

He considers himself, then, an "evolutionary or critical rationalist"—a person who recognizes reason to be man's "most precious possession,"²²⁴ yet one with an inherently limited sphere of authority, which derives, as we have discussed, from inherent limitations of the human mind: man's "necessary ignorance of the concrete facts that determine the actions of . . . all the . . . members of . . . society"²²⁵ and the fact that reason necessarily deals with the mental manipulation of abstractions.

The Hayekian critical rationalist values the exercise of reason in human affairs but, in contrast to the constructivist, he recognizes that reason is not omnipotent—that it is a tool, not an author, a servant, not a judge.²²⁶ The critical rationalist recognizes, in particular, that reason is powerless to either determine an appropriate *concrete* pattern for a complex society or consciously regulate or arrange the particular actions of its many members. He recognizes that the use of abstraction is the means whereby man ". . . achieve[s] at least some degree of order in the complex of social affairs, . . . know[ing] it is impossible to master the full detail, while the constructivist rationalist values abstraction only as an instrument in determining particulars."²²⁷ "If the Enlightenment had discovered that the role assigned to human reason in intelligent construction had been too

²²³*The Fatal Conceit*, 8.

²²⁴*Constitution*, 69.

²²⁵*Rules and Order*, 12-13.

²²⁶"Reason is not the judge, but an instrument." "Kinds of Rationalism," *Studies*, 87.

²²⁷"Kinds of Rationalism," *Studies*, 89.

small in the past, [the critical rationalist is] discovering that the task which man is assigning to the rational construction of new institutions is far too big."²²⁸

Hayek, then, allows a rather limited role for human reason in the determination and positive construction of human experience in general and social institutions in particular. Moreover, in line with his conception of reason as a faculty that serves a basically negative function, he is more concerned to identify what reason cannot do than to delineate its positive capabilities. We shall perhaps gain a clearer understanding of his conception of reason's appropriate sphere of competence when we examine the method of social criticism—a method he terms "immanent criticism"—he advances.

On the Method of "Immanent Criticism"²²⁹

Although Hayek insists that inherited values and institutions may not be abandoned merely because we do not fully comprehend their "purpose" or significance, he does not believe that "tradition as such is sacred and exempt from criticism."²³⁰ He argues, in fact, that we who "endeavor to understand how society functions, and to discover where it can be improved, must claim the right critically to examine, and even to judge, every single value of our society."²³¹ As we noted, his argument is not directed against what

²²⁸"Epilogue," *The Political Order of a Free People*, 176.

²²⁹*Mirage*, 24.

²³⁰*Ibid.*, 25. "Recognizing that rules tend to be selected, via competition, on the basis of their human survival-value, certainly does not protect those rules from critical scrutiny. This is so, if for no other reason, because there has so often been coercive interference in the process of cultural evolution." *The Fatal Conceit*, 20.

²³¹"The Errors of Constructivism," *New Studies*, 19.

he considers the proper use of reason but against the "abuse of reason"²³²—the endeavor to "make everything subject to rational control."²³³

If, however, as Hayek claims, inherited traditions embody knowledge which transcends that available to the conscious reasoning mind, how may we determine when critical evaluation of social institutions is in order and when it is merely an expression of rationalistic hubris? The only explicit guidelines Hayek offers are to be found within his doctrine of "immanent criticism."

Immanent criticism is a ". . . sort of criticism that moves within a given system of rules and judges particular rules in terms of their consistency or compatibility with all other recognized rules in inducing the formation of a certain kind of order of actions. . . ."²³⁴

. . . [T]hough we must constantly re-examine our rules and be prepared to question every single one of them, we can always do so only in terms of their consistency or compatibility with the rest of the system from the angle of their effectiveness in contributing to the formation of the same kind of overall order of actions which all the other rules serve. There is room for improvement, but we cannot redesign but only further evolve what we do not fully comprehend. . . .²³⁵

.....
All we can do is confront one part [of civilization] with the other parts . . . test each and every value about which doubts are raised by the standard of other values, which we can assume that our listeners or readers share with us.²³⁶

.....
[For]. . . [i]f we are to make full use of all the experience which has been transmitted only in the form of traditional rules, all criticism and efforts at improvement of particular rules must proceed within a

²³²F. A. Hayek, *The Counter-Revolution of Science: Studies on the Abuse of Reason* (London: The Free Press of Glencoe, 1955).

²³³"Kinds of Rationalism," *Studies*, 93.

²³⁴*Mirage*, 24. The kind of order of actions with which Hayek is concerned is, of course, the Great or Open Society.

²³⁵*The Political Order of a Free People*, 167-171.

²³⁶"The Errors of Constructivism," *New Studies*, 22.

framework of given values which for the purpose in hand must be accepted as not requiring justification.²³⁷

On Hayek's view, then, specific aspects of a culture must be judged or critically appraised only within the context of that culture and not from any transcendental or universal perspective.²³⁸ For Hayek, there is no such perspective: "The picture of man as a being who, thanks to his reason, can rise above the values of civilization, in order to judge it from the outside . . . is an illusion. For Hayek, morals, values, and reason are entirely natural phenomena, evolutionary adaptations which have enabled man to survive and flourish in his particular kind of world. Those social institutions that have survived the evolutionary process did so because they serve human needs and because they generate a superior overall order of activities.²³⁹ Values and moral rules, in other words, serve a function in regard to the maintenance of a given social order and may not be manipulated or discarded merely because we may not comprehend their rationale.

Hayek suggests, moreover, that we still have much to learn regarding the relationship between values, morals, and legal rules, on the one and, and the overall order

²³⁷ *Mirage*, 24.

²³⁸ "The Errors of Constructivism," *New Studies*, 20. It has been suggested, however, that Hayek himself judges particular human societies by a universal value or criterion—that of human survival. I thank Dr. Ellis West for this observation.

²³⁹ The order to which Hayekian theory refers manifests itself in the matching or coincidence of plans and expectations across persons who are necessarily ignorant of most of the concrete circumstances prevailing throughout society and of the concrete aims pursued by their (mostly unknown) fellows. "The order of society . . . must be defined as a condition in which individuals are able, on the basis of their own respective peculiar knowledge, to form expectations concerning the conduct of others, which are proved correct by making possible a successful mutual adjustment of the actions of these individuals." "The Errors of Constructivism," *New Studies*, 9.

The existence of such order is what accounts for the fact that the means we require to realize both our transitory ends and enduring values are made available by strangers who have no explicit knowledge of our concrete needs and wants. It is what allows the activities of millions of person who do not and cannot know one another's concrete circumstances and intentions to "dovetail" or mesh rather than clash or conflict, and this despite the fact that most persons are only tacitly aware of its existence and do not deliberately aim to produce it. See Appendix A.

that is the unintended product of their observance, on the other. "We do not really understand how [our whole moral system] maintains the order of actions on which the co-ordination of the activities of many millions depends . . . And since we owe the order of our society to a tradition of rules which we only imperfectly understand, *all progress must be based on tradition.*"²⁴⁰

Moreover, Hayek attaches great significance to the fact that every person is born into a given value framework²⁴¹ and a given working social order which no one created and which no one has the power or authority to alter at will. The fact that the "existing factual order of society exists only because people accept certain values"²⁴² limits (both morally and pragmatically) the extent to which we can deliberately reform or change existing rules. We are not free to cut a new moral or legal system from whole cloth because

All rules of conduct serve . . . a particular kind of order to society . . . [T]hough such a society will find it necessary to enforce its rules of conduct in order to protect itself against disruption, it is not society with a given structure that creates the rules appropriate to it, but the rules which have been practiced by a few and then imitated by many which created a social order of a particular kind.²⁴³

.....
 . . . [N]o individual has the power to change [this order] fundamentally; because such change would require changes in the rules which other members of the society obey, in part unconsciously or out of sheer habit, and which, if a viable society of a different type were to be created, would have to be replaced by other rules which nobody has the power to make effective.²⁴⁴

²⁴⁰*The Political Order of a Free People*, 167.

²⁴¹*Mirage*, 24.

²⁴²"The Errors of Constructivism," *New Studies*, 21.

²⁴³*Political Order of a Free People*, 166.

²⁴⁴*Ibid*, 27.

Thus the necessity of "immanent criticism"—criticism of "particular rules within standards set by . . . the aggregate structure of well-established rules."²⁴⁵

On the Issue of Justification

For Hayek, the rules of morality and justice are the same as they were for David Hume: conventions that have emerged and endured because they smooth the coordination of human affairs and are indispensable, given the nature of reality and the circumstances of human existence, to the effective functioning of society.²⁴⁶ For Hayek, as for Hume, neither the "rules of morality [nor the rules of justice] are . . . the conclusions of our reason."²⁴⁷

Yet [Hayek argues] Hume's claim has not sufficed to deter most modern rationalists from continuing to believe . . . that something not derived from reason must be either nonsense or a matter for arbitrary preference, and, accordingly, to continue to demand rational justifications. . . .

.....
[Yet] nothing is justifiable in the way demanded. Not only is this so of morals, but also of language and law and even science itself [N]o matter what rules we follow, we will not be able to justify them as demanded; so no argument about morals—or science, or law, or language— can legitimately turn on the issue of justification

The issue of justification is indeed a red herring. . . While our moral traditions cannot be constructed, justified or demonstrated in the way demanded, their processes of formation can be partially reconstructed . . . and in doing so we can to some degree understand the needs that they serve. To the extent we succeed in this, we are indeed called upon to improve and revise our moral traditions by remedying recognisable defects by piecemeal improvement based on immanent criticism, that is, by analysing the compatibility and consistency of their parts, and tinkering with the system accordingly. . . . Th[is] 'rational reconstruction' . . . of how the system might have come into being is . . . an historical, even

²⁴⁵Barry, "The Liberal Constitution," 279.

²⁴⁶"The Legal and Political Philosophy of David Hume," *Studies*, 106-121.

²⁴⁷*The Fatal Conceit*, 66.

natural-historical investigation, not an attempt to construct, justify, or demonstrate the system itself. . . It . . . resembles what followers of Hume used to call conjectural history, which tried to make intelligible why some rules rather than others had prevailed . . . This is the path taken not only by the Scottish philosophers but by a long chain of students of cultural evolution, from the classical Roman grammarians and linguists, to Bernard Mandeville, through Herder, Giambattista Vico . . . von Savigny, and on to Carl Menger.²⁴⁸

Hayek's point is that the values and rules whose observance generated advanced liberal society can not be proved or conclusively demonstrated to be superior to all others. What he argues is that only one system of rules²⁴⁹ ("undoubtedly still very imperfect and capable of much improvement"²⁵⁰) has yet been discovered which can maintain the "kind of open or 'humanistic' society where each individual counts as an individual and not only as a member of a particular group, and where therefore universal rules of conduct can exist which are equally applicable to all responsible beings. Moreover, *[i]t is only if we accept such a universal order as an aim,*²⁵¹ that is, if we want to continue on the path which since the ancient Stoics and Christianity has been characteristic of Western civilization, that we can defend this moral system as superior to others—and at the same time endeavor to improve it further by continued immanent criticism."²⁵²

²⁴⁸*The Fatal Conceit*, 66-70.

²⁴⁹Described in Appendix C.

²⁵⁰*Mirage*, 27.

²⁵¹Which we do because we hold the moral values implied by such an order, values which we who were reared in liberal society absorb throughout the process of enculturation

²⁵²*Mirage*, 27. Emphasis added.

**Before the contributions
of speculative thinkers
can exercise . . . influence,
they have to pass
through a long process
of selection and modification.**

F. A. Hayek

T H R E E

CRITICISM AND COMMENTARY

Hayek's views on the role of reason in human affairs rub against the grain of certain well-established habits of the mind. Not only do they oppose the dominant intellectual outlook of the modern era, but their comprehension requires sensitive attendance to the "tacit dimension" of human experience,²⁶³ a skill at which those schooled in twentieth-century rationalism and positivism may be somewhat rusty. The tension generated by the play of rationalistic and anti-rationalistic elements of Hayek's thought has also led critics to challenge the consistency and coherence of his argument. We shall conclude our study by examining the arguments of various critics who question 1) the value and meaningfulness of the distinction Hayek draws between the two "kinds of rationalism"; 2) the consistency or coherence of the position Hayek takes on the role of reason in human affairs; and 3) whether Hayek's doctrine of "immanent criticism" is adequate to the task he assigns it. We shall argue that 1) the distinction Hayek draws between the two kinds of rationalism is meaningful and that certain attitudes toward reason appear to be related to certain political views; 2) whether Hayek, despite his criticism of constructivism, should himself be considered a constructivist depends on whether we adopt a broad or narrow interpretation of constructivism; and 3) Hayek's method of social criticism does provide the basis for a meaningful critical theory.

First and most generally, it has been suggested that Hayek's entire project—systematically to articulate a coherent liberal ideology—is as much a product of

²⁵³Donald W. Livingstone, "Hayek as Humean," *Critical Review* (Spring 1991): 159-177. Livingstone's discussion of this matter, as well as of the general character of Hayek's thought, is particularly insightful.

Enlightenment rationalism as the rival constructivistic theories he wishes to refute. As Michael Oakeshott puts it, "The main significance of Hayek's [work is] not the cogency of his doctrine, but the fact that it is a doctrine. A plan to resist all planning may be better than its opposite, but it belongs to the same style of [rationalist] politics."²⁶⁴

Conservatives of the Oakeshottian persuasion are deeply suspicious of all abstract theorizing or system building. They argue that persons such as Hayek would impose a dangerously "rigid"²⁶⁵ (and constructed) framework on the political process, one that disparages concrete practice in service of some abstract ideal such as individual liberty or efficiency. To Oakeshott, Hayekian liberalism, like all "self-conscious ideolog[ies,]"²⁶⁶ is merely a cookbook of "techniques"²⁶⁷ concocted by "reason"—a technical manual, one may say, for the "politically inexperienced."²⁶⁸ These remarks were written many years ago (in 1947, shortly after the publication of *The Road to Serfdom* and before Hayek had written extensively in political philosophy), and one wonders whether Oakeshott held the same view later in his life.²⁶⁹ For, as several commentators have observed, he and Hayek had very similar points of view regarding the nature of the social order and the role of politics in social life.²⁶⁰

²⁵⁴Michael Oakeshott, *Rationalism in Politics and Other Essays* (New York: Basic Books, 1962), 21.

²⁵⁵*Ibid.*

²⁵⁶*Ibid.*, 21-22.

²⁵⁷*Ibid.*, 22.

²⁵⁸*Ibid.*

²⁵⁹Oakeshott died in 1990.

²⁶⁰Cf. Barry, *Hayek's Social and Economic Philosophy*, 197.

Along the same lines but from a different perspective,²⁶¹ Brian Lee Crowley implicitly rejects Hayek's distinction between "evolutionary rationalism" and constructivism. He argues that Hayekian philosophy lies foursquare within the tradition of rationalistic liberalism and that the liberal principles he defends are a product of the speculative and ahistorical rationalism Hayek ostensibly rejects.²⁶²

Contrary to Crowley and other communitarians, however, Hayek claims that classical liberal doctrine is not a product of ahistorical abstract speculation (as are the rationalistic contractarian and rights-based doctrines derived from the French tradition) but of concrete experience and particular historical developments (primarily in England). Hayek conceives liberal principles as the precipitate of practical experience, preserved and transmitted because they made possible the growth of an "extended order of human cooperation"²⁶³ that greatly contributed to human flourishing. He conceives his endeavor to systematize such principles into a coherent ideology as an effort to identify and articulate those spontaneously evolved rules whose observance in fact produced the liberal order, not as an exercise in rationalistic construction or abstract speculation.²⁶⁴ Whether or not his self-characterization is accurate depends, of course, on whether the evolutionary account of the emergence of social institutions is valid.

²⁶¹One that has been dubbed "anarcho-Aristotelian," David Levy, "Liberalism, Politics and Anti-Politics," *Critical Review* (Spring 1989): 343.

²⁶²Brian Lee Crowley, *The Self, the Individual, and the Community: Liberalism in the Thought of F. A. Hayek and Sidney and Beatrice Webb* (Oxford: Clarendon Press, 1987), vi-vii.

²⁶³*The Fatal Conceit*, 6.

²⁶⁴*Constitution*, 3, 58.

I. ON THE DISTINCTION BETWEEN CONSTRUCTIVIST AND CRITICAL RATIONALISM

Several commentators have argued that Hayek's distinction between two "kinds of rationalism"²⁶⁵—the "evolutionary" rationalism he espouses and the "constructivistic" rationalism he condemns—is of little use or value because the conceptions of constructivism and critical rationalism are too imprecise and confused to be useful as explanatory constructs.

Both Chandran Kukathas²⁶⁶ and Arthur Diamond²⁶⁷ suggest that Hayek's categorization of various thinkers as either constructivist or critical rationalists (see Appendix C) is arbitrary. They argue that the distinction he draws between constructivist and critical rationalism is "unsound"²⁶⁸ and of "limited usefulness"²⁶⁹ because 1) Hayek "never makes . . . clear why some thinkers are constructivists and some not";²⁷⁰ and 2) the thinkers he assigns to either category do not in fact hold the "particular [epistemological and political] positions"²⁷¹ by which Hayek allegedly defines the categories. More specifically, they point out that there appears to be no one-to-one

²⁶⁵"Kinds of Rationalism," *Studies*, 89.

²⁶⁶Chandran Kukathas, *Hayek and Modern Liberalism* (Oxford: Oxford University Press), 1989.

²⁶⁷Arthur M. Diamond, Jr., "F. A. Hayek on Constructivism and Ethics," *Critical Assessments*: III, 239-253.

²⁶⁸*Ibid.*, 240.

²⁶⁹*Ibid.*

²⁷⁰Kukathas, 207.

²⁷¹Diamond maintains that constructivism "as Hayek uses the term . . . refers to particular positions on each of three distinct levels of discourse: epistemology, ethics, and politics. . . ." (Diamond, 240). We shall confine our discussion to Hayek's views on the relation between epistemology and politics. We have not examined his ethical position in any depth. To do so now would make an already-too-long essay even more cumbersome.

correspondence between a belief in spontaneous evolutionary processes and liberal politics, on the one hand, or, on the other, a belief in a design theory of institutions and illiberal politics. I shall argue that criticism one is, to some extent, valid but that criticism two is misconceived. Hayek does not define constructivism in terms of explicit adherence to "particular positions."

To illustrate the above contentions, these critics point out that Marx, perhaps Hayek's prototypical constructivist thinker, "... certainly did not believe that all human society was the result of conscious design [according to Hayek, the false assumption underlying constructivistic politics]. Indeed, one of the main features of [Marx's] system was the *necessary historical evolution* of human institutions [a view Hayek generally associates with critical rationalism and liberal politics]." ²⁷²

They further argue that Locke and Kant, like Hobbes and Rousseau, subscribed to a variant of social-contract theory (contractarianism is, for Hayek, a form of constructivism), yet Hayek is willing to assign the former pair to the preferred liberal category, while roundly condemning the latter as constructivists.²⁷³ Lord Robbins has a similar complaint.²⁷⁴ Although he is generally sympathetic towards Hayek's views, he objects to the fact that Hayek classifies Jeremy Bentham as an illiberal constructivist. The confusion seems endless. Only one thing is clear: Hayek has succeeded in giving constructivism a bad name. No one, apparently, wants to put their favored theorist in that camp. Let us examine whether Hayek's classificatory scheme really is as confused and ambiguous as these critics suggest.

²⁷²Diamond, 244.

²⁷³Diamond makes the same point regarding Locke.

²⁷⁴Lionel Robbins, "Hayek on Liberty," *Critical Assessments*: II, 124.

In my opinion, the above critics do not grasp the import of Hayek's distinction between constructivist and critical rationalism; he does not define constructivism as adherence to any "particular positions."²⁷⁵ The constructivist/critical rationalist categories should be conceived as "ideal types" that represent tendencies, propensities, and dispositions—general "manner[s] of thinking"²⁷⁶ that may or may not crystalize into sharply delineated or explicit positions in epistemology or politics.

I suggest, then, that constructivism (a *kind* of rationalism) should be understood as a term that represents a complex of related attitudes, not simply the explicit "position" that social institutions were literally invented or designed. It refers to a broad and highly abstract category that encompasses a wide range of intellectual inclinations and *explicit and implicit* views: the general ideas that only social phenomena whose purpose is accessible to the reasoning intellect deserve our approval; that the conscious mind can successfully control and co-ordinate social processes; that reason, by itself, can determine values and ends; and so on.

Moreover, actual thought is never black (constructivism) or white (critical rationalism) but will exhibit shades of gray.²⁷⁷ It seems to me that everyone born over the past several centuries will exhibit "constructivist" tendencies if, as Hayek contends, our manner of thinking is a product of social experience. Cartesian conceptions have predominated in intellectual and social affairs throughout the modern era, embedded, however, in that nonrational matrix of traditional rules and spontaneous processes to

²⁷⁵"The core of . . . the constructivistic type of liberalism . . . was not so much a definite political doctrine as a general mental attitude" "Liberalism," *New Studies*, 120.

²⁷⁶"The Errors of Constructivism," *New Studies*, 3.

²⁷⁷Hayek does not conceive constructivism as the opposite of critical rationalism but as an "illegitimate and erroneous exaggeration of a characteristic element [i.e. rationalism] of the European tradition." "Kind of Rationalism," *Studies*, 93.

which Hayek has drawn our attention. No one whose mind has been shaped in that milieu could be either a "pure" constructivist" or a purely "critical rationalist." Even Hayek, as we shall discuss, may not fit neatly into either category.

Furthermore, we should recall Hayek's views on the nature of abstraction and the classificatory mechanism that is the mind. Man perceives because his mind is operated by rules which classify phenomena according to certain highly abstract aspects. The simultaneous operation of many such rules, some of which may not have explicitly entered the conscious reasoning process, results in precise specification. Hayek would not claim exhaustively to have described all the rules ("particular positions") that govern the constructivist/critical rationalist categories—he would not have considered this possible or regarded his explicit statements on the attributes of constructivistic thought as the final word. In line with his evolutionary epistemology, then, we can expect a more and more precise articulation of the rules that govern the categories to emerge over time.

Nevertheless, as the above criticisms reveal, Hayek has not in fact clearly articulated the distinction he has in mind. I would like to suggest, however, that, although Hayek never explicitly says so, there do exist "defining attributes" of constructivism and critical rationalism that render his classificatory schemata meaningful and consistent. I submit that certain attitudes toward abstractness and reason's ability to determine and consciously regulate the concrete particulars of social life lie at the core of the constructivist/critical rationalism distinction. Whatever other views they may hold, I would argue that Hayekian constructivists refuse to recognize that reason cannot "transcend the realm of the abstract"²⁷⁸ or consciously manipulate the particular aspects of a complex social order to good effect. They do not recognize that abstraction is the means whereby

²⁷⁸*Rules and Order*, 32.

man overcomes his constitutional inability to grasp the infinite complexity of concrete reality. Constructivists (implicitly) believe that, regardless of how we may have reached our present position, whether through evolution or design, Reason is today capable of straightening out that heretofore haphazard path and of determining both an appropriate *concrete* pattern for present society and the most desirable particular path of social evolution.²⁷⁹

It seems to me, then, that Hayek's "kinds of rationalism" are related to (but not defined by) certain political "positions" in the following manner: Constructivists are "not content with abstraction";²⁸⁰ they do not recognize that reason is incapable of designing a non-arbitrary concrete pattern for a complex society or of consciously co-ordinating or arranging the particular affairs of its members. They thus tend to subscribe to illiberal (in the Hayekian sense) political views that endorse the use of legislation (for Hayek, legislation is always a conscious construction) to manipulate and override the concrete pattern that emerges as a result of the spontaneous social process. Critical rationalists, on the other hand, recognize (perhaps only implicitly) that reason can only deal in abstractions and are thus led to embrace the classical-liberal commitment to abstract principle and the rule of law (as Hayek conceives it).²⁸¹ I submit that this is the key to understanding Hayek's views on the relationship between epistemology and politics.

Why, for instance, would Hayek label Kant a liberal even though Kant certainly believed that reason was an autonomous faculty capable of "guid[ing] moral conduct,"²⁸²

²⁷⁹*Rules and Order*, 23-24.

²⁸⁰*Ibid*, 29.

²⁸¹That is, that all valid law consists of general negative prohibitions universally applicable to all members of a society (see Appendix B). *Constitution*, 205-212, 234-244, 411.

²⁸²Kukathas, 210.

an attitude Hayek generally condemns as constructivistic? Because Kant reached what Hayek considers the "right conclusion"—that rules of law must be abstract and general—because he recognized that "welfare has no principle,"²⁸³ that reason is unable, by itself, to determine concrete particulars. The same argument explains Hayek's favorable attitude toward Locke. Despite his apparent contractarianism,²⁸⁴ Locke came to the right—liberal—conclusions regarding the attributes of law. Bentham, however, despite his professed liberalism, believed that general rules or abstract principles could be overridden by particular legislation in service of the greatest good.²⁸⁵

Marx, on the other hand, may have recognized that evolutionary processes operated in the past, but he certainly believed that Reason should and could henceforth direct those processes in detail. He and his followers aimed to ". . . to bring all production under . . . conscious purposive ordering . . . to consciously regulate . . . the life process of society . . . in accordance with a settled plan."²⁸⁶ Moreover, he implicitly claimed the ability to stand outside history, to identify the "necessary" path of human evolution and to

²⁸³Immanuel Kant, *Kant's Political Writings*, ed. H. Reiss, trs. H. B. Nisbett (Cambridge, 1970), 183; cited in *The Fatal Conceit*, 75.

²⁸⁴Which he probably employed as a polemical device anyway

²⁸⁵Moreover, to believe, as Bentham and other utilitarians did, that one can measure (and even quantify!) the particular consequences of action is the height of constructivistic illusion. We cannot know but a fragment of the effects or extended ramifications of our actions in a modern extended order. This, for Hayek, is one of the reasons we follow rules. "The trouble with the whole utilitarian approach is that . . . it completely eliminates the factor which makes rules necessary, namely our ignorance. It has indeed always amazed me how serious and intelligent men, as the utilitarians undoubtedly were, . . . could have proposed a theory which presupposes a knowledge of the particular effects of our individual actions when in fact the whole existence of the phenomenon they set out to explain, namely of a system of rules of conduct, was due to the impossibility of such knowledge." *Mirage*, 20.

²⁸⁶Karl Marx, cited in Kukathas, 11.

foresee its future course. He claimed access to the "synoptic" vision—according to Hayek, the "characteristic error"²⁸⁷ of the constructivist.

I submit, then, that Hayekian constructivism, at bottom, is a turn of mind that believes itself able, through the exercise of Reason, to construct a coherent overall order from "knowledge of the [concrete] particulars."²⁸⁸ It may be associated with certain explicit views regarding the origin of institutions, but this may not be its defining attribute. Both Diamond and Kukathas have shown there is no one-to-one correspondence between an explicit belief in design theory and illiberal politics. If we interpret constructivism, however, as an attitude toward the relationship between reason and the concrete and corresponding beliefs regarding the type of rules government should enforce (general or particular), then I believe Hayek's classification is meaningful and not inconsistent.

Kukathas may be correct, however, when he points out that Hayek has not shown that illiberal politics are necessarily related to an *explicit* belief in the design theory of social institutions.²⁸⁹ Hayek claims that "if constructivist rationalism can be shown to be based on factually false assumptions [especially, the assumption that social institutions were deliberately designed], a whole family of schools of scientific as well as political thought will also be proved erroneous."²⁹⁰ I do not think Hayek meant to imply that constructivists hold such a belief consciously and explicitly; it is merely implicit in their general views. Hayek should have made it clear, however, that constructivists act "as if"

²⁸⁷*Rules and Order*, 14.

²⁸⁸*Ibid*, 14.

²⁸⁹Kukathas, 206.

²⁹⁰*Rules and Order*, 5-6.

they believed in design theory; as it stands, one cannot accept his claim without qualification.

II. IS HAYEK A CONSTRUCTIVIST RATIONALIST?

A second major criticism directed at Hayek's position on the role of reason concerns the issue of consistency: Hayek is accused of practicing the very constructivism against which he preaches. One of the more obvious reasons for this charge is that Hayek has "rationally constructed" a detailed model Constitution that embodies his political doctrines and "corrects" the flaws he perceives in the institutional arrangements prevailing in the Western democracies.²⁹¹ This endeavor appears to some commentators as unmistakable evidence of the "constructivist turn"²⁹² in Hayek's thought. Kukathas, for instance, views Hayek's exercise in constitutional design as an attempt to "construct the *principles* we need when we try to replace our existing (*spontaneously evolved*) institutions"²⁹³ (italics mine). If Hayek is indeed endeavoring to "**construct** [that is, to invent or deliberately design] *principles* [laws, general rules] to replace our *spontaneously evolved* institutions," we have every reason to accuse him of egregious inconsistency and outright incoherence, for this is precisely the constructivistic aim he explicitly condemns.

Is this, however, an accurate description of Hayek's endeavor? Here is how Hayek describes his effort:

What I have been trying to sketch in these volumes . . . has been a guide out of the process of degeneration of the existing form of government, and to **construct an intellectual emergency equipment** which will be available when we have no choice but to replace the

²⁹¹*Political Order of a Free People*, 98-119.

²⁹²Kukathas, 211.

²⁹³*Ibid.*

tottering structure by some better edifice than resort in despair to some sort of dictatorial regime. *Government is necessarily the product of intellectual design.* If we can give it a shape in which it provides a beneficial framework for the free growth of society without giving to any one power to control this growth in the particular, we may well hope to see the growth of civilization continue.²⁹⁴

We note that Hayek's aim is to "*construct an intellectual emergency equipment*" (that is, a blueprint for a new Constitution), not, we emphasize, to construct new *principles* (laws, general rules). Hayek does not conceive a society's Constitution as an articulation of law, but as a "superstructure"²⁹⁵ erected to enforce the pre-existing, spontaneously evolved rules of just conduct. Government (the organization established by a Constitution), for Hayek, "*is necessarily the product of intellectual design,*" a deliberately constructed entity created to achieve particular purposes (see Appendix A). It is not, on his view, a "spontaneously evolved" institution like law or moral and political principles, the view Kukathas imputes to Hayek. There is all the difference in the world between *reconstructing a previously constructed organization*, and "constructing" (inventing, consciously designing) principles, laws, or general rules, the possibility of which Hayek explicitly and emphatically denies. His argument, as we have discussed, is that the abstract rules and principles whose observance generated modern liberal society spontaneously emerged throughout a gradual process of cultural evolution. No one, Hayek maintains, invented or constructed such rules. Two of his fundamental concerns were to explain why the endeavor rationally *to construct new legal or moral principles* is misguided and to explicate the nonrational origin of law and morals.

²⁹⁴*The Political Order of a Free People*, 152.

²⁹⁵*Rules and Order*, 135.

Norman Barry²⁹⁶ has also evaluated Hayek's exercise in constitutional construction. He, however, reaches a conclusion opposite to Kukathas's: like James Buchanan,²⁹⁷ he faults Hayek for placing too much confidence in evolutionary processes and not enough in the constructive powers of reason. On Barry's view, Hayek fails to recognize the improvement that may be gained by endeavoring consciously to reconstruct contemporary liberal Constitutions: ". . . [T]he mistake in some evolutionist thought, including Hayek's, is to condemn *all* forms of constitutional design, . . . when in fact sophisticated versions of it provide a foundation for the liberal order at least as persuasive as Hayek's."²⁹⁸ Barry also points out, in my view rightly, that Hayek's constitutional and political "reforms, radical though they sound, are quite consistent with his . . . non-rationalist . . . epistemology . . . [and with] the principles of traditional liberalism as Hayek understands them."²⁹⁹ Hayek's Constitution, he suggests, should be conceived as a "metaphor . . . designed to alert the reader to mistaken constitutional forms and to show how *critical* reason can be used to correct them."³⁰⁰

We conclude, then, that Hayek's exercise in constitutional construction is not inconsistent with his anti-constructivism and anti-rationalism. Nevertheless, there are other reasons to believe that Hayek may be guilty of practicing (or at least endorsing) the

²⁹⁶Barry, "The Liberal Constitution," 267-282.

²⁹⁷Buchanan has criticized Hayek for being "so distrustful of man's explicit attempts at reforming institutions that he accepts uncritically the evolutionary alternative." James Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago, 1975), 194 n.1. Cited in Kukathas, 209.

²⁹⁸Barry, "The Liberal Constitution," 278.

²⁹⁹*Ibid*, 277.

³⁰⁰*Ibid*.

constructivism he condemns. R. A. Arnold³⁰¹ offers one of the more convincing arguments in support of such a view although, as we shall discuss below, none of Hayek's critics seem to have noticed what I consider the most conclusive evidence of Hayek's constructivistic aspirations. First, however, let us review Arnold's argument.

Arnold not only perceives a constructivistic impulse impelling Hayek's thought but argues that Hayek's position "is not, at base, a commendation of the evolutionary process, . . . [but is actually] . . . a successful attempt at [what Arnold terms] non-teleological construction."³⁰² The "only meaningful way to view evolution,"³⁰³ he maintains, is as a process that 1) occurs within an "unspecified environment"³⁰⁴ and 2) generates completely undetermined outcomes. According to Arnold, however, the Hayekian evolutionary process occurs within a specified environment—a legal framework that consists of general, abstract rules. Moreover, a Hayekian order would not exhibit completely undetermined outcomes; although it "does not guarantee an 'end' or 'end-state,' . . . it bounds or limits the range of 'ends' or 'end-states' that may come about."³⁰⁵ As such, it should be considered an example of "non-teleological construction," and Hayek, ". . . in no contradiction of terms, [should be considered] an antirational, non-teleological constructivist."³⁰⁶

³⁰¹R. A. Arnold, "Hayek and Institutional Reform," *Critical Assessments* III: 227-238.

³⁰²*Ibid.*, 237.

³⁰³*Ibid.*, 234.

³⁰⁴*Ibid.*

³⁰⁵*Ibid.*

³⁰⁶*Ibid.*

Arnold recognizes that his argument only holds if the general rules requisite to the emergence of the Hayekian order have not themselves spontaneously emerged. He argues, however, that although "it is not impossible that general rules would emerge, . . . simple observation is evidence that they do not exist at present."³⁰⁷ He notes that the observance of abstract rules depends critically upon the moral code honored by the people. More particularly, it requires one that places abstract justice over concrete loyalty to one's group. Since this moral code is no longer widely embraced (according to Arnold), the Hayekian order could only be brought into being by instituting a constructed legal framework.

This is a perceptive and interesting argument, but I do not think Arnold's characterization of Hayek's position is completely accurate. To Arnold, the fact that "general rules . . . do not exist at present" apparently demonstrates that the Hayekian order could only be induced by deliberate design and that Hayek is not "at base" an evolutionary theorist.

First, Hayek maintains that the abstract legal framework that generated the spontaneous order of liberal society has *in fact* emerged *via* an evolutionary process, not merely that general rules "would emerge" given the proper moral code. More specifically, he claims it emerged as a consequence of the gradual spatial extension of the territory governed by a single legal code.³⁰⁸ Though the observance of abstract rules was no

³⁰⁷*Ibid*, 237.

³⁰⁸ Hayek argues that in a small face-to-face society, each member can know both the needs of his fellows and the effects of his actions and will, therefore, generally be obligated to render assistance in case of need. As the spatial range governed by a particular legal code expands, however, to include persons who neither share nor are even aware of the same concrete circumstances and ends of one's own group, the "enforceable duty to aim at the well-being of the other members of the . . . group" (*Mirage*, 146) becomes incapable of fulfillment. One's legal obligations toward one's fellows necessarily become increasingly abstract and negative. In other words, Hayek claims that the moral progress that accompanied the transition from the Tribal Society to the Great or Open Society—the

doubt never universal, even within the liberal order, the ideal of universal justice certainly guided the development of law and was honored to the extent that it permitted the liberal order to emerge and theorists to identify the nature and function of its underlying legal principles.³⁰⁹

Moreover, the fact that general rules "do not exist at present" does not disprove Hayek's contention that evolved legal systems tend to converge toward the abstract framework he has described,³¹⁰ for Hayek argues that the corruption of the legal framework has not been due to spontaneous processes or to a genuine abandonment of traditional liberal values (including a belief in universal justice),³¹¹ but to excessive and misguided legislation (that is, to coercive intervention in the development of law).³¹² We do not know what our legal framework would look like in the absence of such intervention.³¹³

On the other hand, Hayek has also argued that we can and should deliberately aim to establish the abstract legal framework necessary for the operation of spontaneous ordering processes. If we purposefully institute such a legal framework with the specific

extension of the obligation to treat every other person by the same moral rules ". . . rather than as either a known friend or an enemy—require[d] a reduction of the range of duties we owe to all others" (*Ibid*, 90). "When we can no longer know the others or the circumstances under which they live, [positive duties] become a . . . psychological and intellectual impossibility" (*Ibid*, 146).

³⁰⁹*Constitution*, 58.

³¹⁰"There may exist just one way to satisfy certain requirements for forming an extended order" *The Fatal Conceit*, 17.

³¹¹*Constitution*, 3.

³¹²*The Fatal Conceit*, 20.

³¹³*Ibid*, 20.

intention of creating a spontaneous social order, then it seems to me that this would qualify, as Arnold claims, as an act of "non-teleological construction." And Hayek does suggest that such a conscious and deliberate approach may today be indispensable to the preservation of liberal society.³¹⁴ I believe Arnold has a point.

As I mentioned earlier, however, none of Hayek's critics, to my knowledge, have drawn attention to what I believe is the clearest evidence of Hayek's latent constructivist intent. "It is possible," Hayek claims, "that an order which would still have to be described as spontaneous rests on rules which are entirely the result of deliberate design."³¹⁵ Although he does not, of course, believe that the liberal order is historically the result of such design, he does suggest that the deliberate construction of a spontaneous social order is "at least conceivable."³¹⁶

It seems to me that Hayek's suggestion that we can deliberately construct a spontaneous social order flatly contradicts his views regarding the evolutionary emergence and necessary coherence of law, morals, and values.³¹⁷ If, as Hayek claims, the social structure of a given society emerges as an unintended consequence of the perception, values, and behavior of the populace, then deliberately to manipulate that structure by imposing the abstract legal framework requisite to the operation of a spontaneous social order must destroy whatever working order previously existed and violate the endogenous values that grew it.³¹⁸ It is one thing to argue that we who have inherited liberal

³¹⁴*Constitution*, 7.

³¹⁵*Rules and Order*, 46.

³¹⁶*Ibid*, 45.

³¹⁷Necessary, that is, if we hope to maintain a coherent order

³¹⁸"The existing factual order of society [and surely this is true of all societies] exists only because people accept certain values." "The Errors of Constructivism," *New Studies*, 21.

institutions and values must recognize their function and allow our rational insight to guide the development of law and public policy. It is quite another, however, to suggest that liberal rules can be deliberately instituted in a society that has not spontaneously evolved those rules and values.³¹⁹ Would this not involve an attempt consciously to reconstruct whatever working order existed prior to the establishment of the framework of rules requisite to the formation of a spontaneous order?

I simply do not see how this can be reconciled with Hayek's evolutionary account of the emergence and growth of social institutions. If we interpret constructivism broadly as the endeavor rationally to design or consciously to build a working social order, then Hayek must plead guilty to inconsistency. The only possible defense he could offer is that the rules that comprise the abstract framework were not themselves constructed by reason. Nevertheless, unless those rules cohere with the values and practices of the populace, their implementation would represent, to my mind, a constructed imposition.

III. ON THE METHOD OF IMMANENT CRITICISM

It has been argued that Hayek's distinction between constructivism and critical rationalism is unhelpful because he offers insufficient criteria by which we may determine when it is and is not legitimate to subject existing institutions and practices to rational scrutiny.³²⁰ It has also been suggested that Hayek's "anti-rationalism is so strong that it virtually disables him from that critical rationalism which is essential for the appraisal of

³¹⁹As Hayek himself acknowledges, liberal and democratic institutions have often failed to take root in societies that lack the values and moral traditions presupposed by them. *The Political Order of a Free People*, 1.

³²⁰Kukathas, 81-82.

particular traditions."³²¹ How are we to know when social criticism is in order and when it is a dangerous expression of constructivistic arrogance? How are we to know whether oppressive customs serve a function inaccessible to reason yet indispensable to the preservation of a particular social order? Hayek seems to justify even the most morally repugnant practices merely on the grounds that they have heretofore survived the process of cultural evolution. He seems, to some critics, to have no critical theory at all.³²²

On Hayek's view, however, "recognizing that rules tend to be selected, via competition, on the basis of their human survival-value, certainly does not protect those rules from critical scrutiny."³²³ As we have mentioned, he believes we can and should subject "*each and every*"³²⁴ value, rule, and practice to the most searching rational examination. What he denies is that we can simultaneously criticize all our inherited institutions or judge our civilization as a whole (from what perspective?). Not only "could [we] not live among other people [without] accept[ing] countless traditions without even thinking about them, . . ."³²⁵ but such absolute doubt would result in the destruction of the existing social order which, on Hayek's view, no one has the authority to bring about.³²⁶

³²¹Barry, "Hayek on Liberty," 280.

³²²Kukathas, 82.

³²³*The Fatal Conceit*, 20.

³²⁴"The Errors of Constructivism," *New Studies*, 22.

³²⁵ "Though the free man will insist on his right to examine and, when appropriate to reject any tradition, he could not live among other people if he refused to accept countless traditions without even thinking about them. . . ." *The Fatal Conceit*, 62.

³²⁶*The Political Order of a Free People*, 166.

Hayek does not disparage social criticism. All he is saying is that because "we must always work inside a framework of both values and institutions which is not of our own making,"³²⁷ we can only evaluate or judge present practices and institutions in terms of the values and rules which engendered and maintain that civilization: "The only standard by which we can judge particular values of our society is the entire body of other values of that same society. . . ."³²⁸ As Barry puts it, "Hayek is not saying that we should accept any rules, *regardless of what they are* . . . [H]e insists that we ought not to reject an aggregate structure of well-established rules, but this does not prevent us from criticizing particular rules within standards set by that structure."³²⁹

As we discussed previously, Hayek believes that "the aim of jurisdiction is the maintenance of an ongoing order of actions."³³⁰ It seems to me that Hayek conceives the task of the critic as similar in certain respects to that of the judge: both must endeavor to weed out and reconcile conflicting and contradictory rules, to bring consistency into the accepted body of inherited values and rules.³³¹ Moreover, the "touchstone for [such] evaluation, . . . [is the] . . . factually existing, but always imperfect, order of actions"³³²

³²⁷*Constitution*, 63.

³²⁸"The Errors of Constructivism," *New Studies*, 19-20.

³²⁹Barry, "The Liberal Constitution," 278. We note that Barry appears to have revised his interpretation of Hayek between 1984 and 1989. See n321, page 83.

³³⁰*Rules and Order*, 98.

³³¹"As in all other fields advance is here [in the development of legal rules] achieved by our moving within an existing system of thought and endeavouring by a process of piecemeal tinkering, or 'immanent criticism,' to make the whole more consistent both internally as well as with the facts to which the rules are applied. Such 'immanent criticism' is the main instrument of the evolution of thought, and an understanding of this process the characteristic aim of an evolutionary (or critical) as distinguished from the constructivist (or naive) rationalism." *Rules and Order*, 118.

³³²"The Errors of Constructivism," *New Studies*, 19-20.

of the society as a whole. "Only when it is clearly recognized that the order of actions is a factual state of affairs distinct from the rules which contribute to its formation can it be understood that such an abstract order can be the aim of the rules of conduct."³³³

For Hayek and classical liberals in general, then, the abstract order which is generated by the observance of certain rules and practices is a distinct, objective structure with discernable characteristics and attributes.³³⁴ Such an undesigned order emerges as an unintended result of the "whole complex of rules which in fact are observed in a given society, . . . [a complex of rules which] . . . determines what particular rule it will be rational to enforce or which ought to be enforced."³³⁵ The critic of Western liberal society, like the judge, must evaluate existing rules and practices in light of their consistency or compatibility with the rules and values both presupposed by and explicitly observed in the kind of social order that is liberal society (see Appendices A and B).

Furthermore, Hayek's critics often write as if criticism were an exclusively intellectual affair. Formal critical theory, however, is an articulation of practices (as such, more the tail-end than the head of the process). Social criticism, especially for thinkers such as Hayek who place great significance on tacit and practical knowledge, learning through imitation and example, and so on, takes place on many levels.³³⁶ Persons who reject particular conventions, who pursue non-traditional careers, who practice non-Western medical arts, to name merely a few possibilities, are all engaged in social criticism

³³³*Rules and Order*, 114. See Appendix A for a discussion of the character of the abstract order to which Hayekian theory refers.

³³⁴*Ibid*, 110.

³³⁵*Mirage*, 51.

³³⁶"Experience comes to man in many more forms than are commonly supposed by the professional experimenter or the seeker after explicit knowledge." *Constitution*, 64.

though they may never have put pen to paper or expressed their beliefs in words. A free society instantiates the highest degree of social criticism.

It is not insignificant, then, that members of liberal society are free to criticize (both explicitly and implicitly) established customs and conventions, to challenge their authority, and to flout convention if willing to bear possible social sanction. Change occurs, from the Hayekian standpoint, by the gradual acceptance of practices and beliefs first adopted by the few and then emulated by the many.³³⁷ Moreover, for Hayek, the law should only consist of those rules indispensable to the maintenance of the social order and not those which merely prevent practices objectionable to the majority.³³⁸ Hayek wishes severely to circumscribe the coercive power precisely because he is concerned not to preclude spontaneous experimentation with new rules and practices.

None of [my] conclusions are arguments against the use of reason but only arguments against such uses as require any exclusive and monopolistic power to experiment in a particular field—power which brooks no alternative and which lays a claim to the possession of superior wisdom—and against the consequent preclusion of solutions better than the ones to which those in power have committed themselves.³³⁹

As Hayek sees it, then, persons or groups should be free to experiment with different (non-compulsory) rules and practices. If these do represent an advance over previous practices, others will emulate them, and they will spread via natural selection; if they do not, the entire society will not fall, just those groups that observed what proved to

³³⁷*Constitution*, 33-35.

³³⁸*Mirage*, 35, 57-59; and *Constitution*, 145-46.

³³⁹*Constitution*, 70.

be maladaptive rules, values, or practices.³⁴⁰ This, Hayek argues, is how the process of cultural evolution operates.

Hayek, it is true, does not offer hard and fast rational criteria by which we may distinguish the merely oppressive from the functionally essential, but he would deny that we can possess such an abstract "cookbook of techniques." Indeed, it is precisely because the reasoning intellect cannot always discern the value of inherited practices that we need liberty and freedom of action. Their value must be determined by the practical success or failure of those who follow them. "Cultural selection is not a rational process; it is not guided by but it creates reason."³⁴¹

On the other hand, a Hayekian order would undoubtedly exhibit strong conservative tendencies, a bias toward slow growth and away from exogenously imposed change. Certain critics suggest that this conservative bias is inconsistent with the progressive liberalism Hayek also advances.³⁴² For all his emphasis on the significance of tradition, however, Hayek himself is not much of a traditionalist in a conservative sense. As Norman Barry points out, he "really is interested in only one tradition, the tradition of spontaneous evolution. . . ."³⁴³

IV. CONCLUSION

As we have mentioned, several of Hayek's critics are disturbed by the undeniable tension generated by the play of rationalistic and anti-rationalistic elements in his thought.

³⁴⁰*Mirage*, 57; *Constitution*, 67.

³⁴¹*Political Order of a Free People*, 166.

³⁴²Barry, "Hayek on Liberty," 281.

³⁴³Barry, *Hayek's Social and Economic Philosophy*, 195.

On the one hand, Hayek wishes to offer a reasoned argument in support of the classical-liberal order; yet he denies, on the other, that reason is capable of "giv[ing] a deductively sound justification"³⁴⁴ for either morals, values, or political principles ("moral rules for collective action"). The highly limited role Hayek assigns to reason, in short, seems to tell against his own endeavor to provide reasons why we should support a classical-liberal social order. As one critic has put the issue: "[G]iven his view of the limited role reason can play in social life, how is it possible [for Hayek] to mount a systematic defence of liberalism without falling victim to the very kinds of rationalism he criticizes?"³⁴⁵ The same critic even suggests that Hayek's views on reason are incoherent,³⁴⁶ in that they are informed by two "philosophically incompatible"³⁴⁷ presuppositions regarding the role of reason in human affairs: 1) the "Humean" assumption that "the very idea of philosophical justification of political principles is questionable at best";³⁴⁸ and 2) the "Kantian" assumption that "insists on the importance of rational justification"³⁴⁹ On this view, Hayek has put himself in the absurd position of seeking to do something that he himself considers impossible—namely to provide a rational justification for classical liberal political principles.³⁵⁰

³⁴⁴Kukathas, 19.

³⁴⁵*Ibid*, vii.

³⁴⁶*Ibid*, 19.

³⁴⁷*Ibid*, i.

³⁴⁸*Ibid*.

³⁴⁹*Ibid*, viii.

³⁵⁰ Although an examination of the alleged incoherence generated by Hayek's simultaneous subscription to "philosophically incompatible" presuppositions regarding the role of reason would lead us too far afield from our topic, we should note that, in our opinion, Kukathas's interpretation of Hayek is flawed. Kukathas, following Gray, argues that Hayekian philosophy is thoroughly imbued

Can such tensions and paradoxes be resolved or do Hayek's rational arguments in defense of the liberal order constitute the constructivism he condemns in other thinkers? We shall argue that whether one should fault Hayek for inconsistently employing the "kind of rationalism" he simultaneously rejects depends on two factors: 1) whether one adopts a broad or narrow interpretation of constructivism; and 2) whether one conceives rational argument and explanation as identical to rational justification.

If one interprets constructivism broadly as an effort to employ reason in the deliberate design and construction of social institutions, then, as we have argued above, Hayek appears to be guilty of endorsing, if not practicing, the constructivism he condemns. Even to suggest that a framework of liberal rules could be deliberately instituted in a non-liberal society smacks of constructivism.

On the other hand, if we interpret constructivism narrowly, then Hayek's position is consistent. The Hayekian constructivist is a person who does not recognize that reason is incapable of designing an appropriate concrete pattern for a complex society or of consciously co-ordinating the particular relations among its numerous members. He is thus led to violate the rule of law as Hayek understands it and to employ legislation in order to override the concrete pattern that emerges from the spontaneous social process. As I have tried to show, the thinkers Hayek labels as constructivist believed that reason could (somehow) consciously manipulate the particular aspects of the social order to good effect. Those he places in the critical-rationalist category, by contrast, acknowledged the

with Kantian (and thus constructivistic) presuppositions which stand in irreconcilable opposition to his Humean skepticism regarding the capacity of reason to provide justification for political and moral principles. As the Humean scholar Donald Livingstone points out, however, "Kukathas makes . . . too much of Hayek's Kantian heritage. . . . [T]he idiom in which Hayek's philosophy is cast is overwhelmingly Humean" (Livingstone, 172, 159). I think it can be shown that Hayek is no Kantian and that "[w]hatever difficulties Hayek's thought may contain, the incoherence Kukathas identifies is not one of them" (*Ibid*, 159).

indispensability of guidance by abstract principles and believed that valid law consists of general and abstract prohibitions, not positive prescriptions (see Appendices B and C).

We also conclude, however, that Hayek has not spelled out the defining attributes of constructivist and critical rationalism as clearly as he could have. This has led to a certain degree of confusion. Moreover, he has left himself open to the charge that he has not always practiced what he preached. Nevertheless, there is no fundamental incoherence in his position. Constructivists believe they can build a desirable social order from "knowledge of the particulars,"³⁵¹ a dream which holds no fascination for Hayek. Although not a constructivist, Hayek is, however, a rationalist—a critical rationalist who believes that the intelligent use of reason requires a sober assessment of its sphere of competence.

Hayek's endeavor to provide reasons in support of the classical liberal order does not mean that he has "fallen victim to the kinds of rationalism" he decries. The character of Hayek's rationalism appears, to a certain extent, to be in the eyes of the beholder. If one believes that any endeavor to provide rational arguments (or "reasons") in support of the liberal order is the mark of a "constructivist rationalist," then, of course one will perceive Hayek as a constructivist. This, however, is not Hayek's own understanding, and the arguments he employs are entirely consistent with his own understanding of the proper use of reason in critical inquiry. As we have stressed throughout this study, Hayek considers himself a "critical rationalist," one who respects the role of reason in human affairs, but nevertheless recognizes that reason is but one of many social tools man employs in service of his values and purposes. Recognizing the limits to the use of this

³⁵¹*Rules and Order*, 14.

tool is certainly the mark of a rationalist ("[i]ndeed it is the height of rationality"³⁵²), but not of a constructivist as Hayek understands that concept.

In the last analysis, those who perceive an objectionably rationalist stance underlying Hayek's thought apparently do not acknowledge his distinction between reason in the sense of rational insight and a rationalistic "abuse of reason." Hayek certainly presents rational considerations that he hopes will commend allegiance to traditional liberal rules and values. Nevertheless, he insists that we accept certain rules and conventions despite the facts that they have not been rationally designed to achieve known results, that we cannot prove their validity, and that we may not be able rationally to discern their significance. That, for Hayek, is the present state of our knowledge.

I believe, however, that there is a distinction between providing a reasonable explanation of the function served by historically evolved social institutions (Hayek's self-characterization of his project) and providing a rational *justification*³⁵³ for them. Even Kukathas recognizes that, in the end, Hayek offers an "explanation of the role or function of rules in the preservation of a social order but not a justification of any particular set of rules,"³⁵⁴ that he, like Hume, offers an "anthropology of morals rather than a moral philosophy."³⁵⁵

In this he is correct, for, as we have seen, Hayek explicitly denies the possibility that inherited values, rules, and practices can be rationally justified.³⁵⁶ On Hayek's view,

³⁵²Barry, *Hayek's Social and Economic Philosophy*, 14.

³⁵³In the Cartesian sense

³⁵⁴*Ibid.*, 203.

³⁵⁵*Ibid.*

³⁵⁶See pages 62-63.

the issue of justification is an outworn inheritance from the Enlightenment, an aspect of the antiquated, "obsolete,"³⁵⁷ and discredited methodology of the Cartesian school.³⁵⁸

It seems to me that those critics who do not recognize a distinction between explanation and justification may be so steeped in Cartesian presuppositions that they believe Hayek *must*, despite his explicit disavowal, be searching for a rational justification of liberal rules.³⁵⁹ Explanation is not justification, but, on Hayek's view, it is the most we can achieve.

The whole issue of justification, it seems to me, represents a deeper, spiritual, dilemma. Those who demand rational or moral justification of liberal values are apparently searching for a justification for life, liberty, and the pursuit of happiness. On what grounds are we entitled to live, to be free, to seek fulfillment? Surely it is more than a coincidence that the rise of Cartesian rationalism was accompanied by a decline in religious faith and an overt hostility toward the religious and spiritual dimensions of human existence. The demand for rational justification of liberal values and institutions is, on my view, the mark of those who have lost their spiritual bearings, who believe that life, on its face, is not self-evidently good and that it must, therefore, be *justified*. For an evolutionary naturalist such as Hayek, however, life does not require justification: "life has no purpose but itself."³⁶⁰

³⁵⁷*Ibid*, 8.

³⁵⁸*Ibid*, 67-70.

³⁵⁹As Livingstone notes, "Throughout the study Kukathas [who accuses Hayek of inconsistently employing the "kinds of rationalism" he repudiates] seems to presuppose the validity of the constructivist stance or at least of a conception of reason that is incompatible with Hayek's. But that conception is never spelled out, and there is no attempt to refute Hayek's conception. Kukathas's frequent claims that Hayek contradicts himself amount to little more than denials of his teachings which beg the question." Livingstone, 171.

³⁶⁰*The Fatal Conceit*, 133.

He does not seek to justify liberal society, but to explain how it has come into being and the functions and needs served by its values and institutions.

It seems to me that Donald Livingstone has seen more clearly than most of Hayek's critics into the heart of this matter. Livingstone points out that inhabitants of liberal society do not hold liberal values inviolable because they can rationally justify them or prove their validity or because rational considerations compel their commitment. We do not need to speculate about the theoretical value of liberty, tolerance, the rule of law, and so on—we have direct, concrete experience and knowledge of such value. Hayek's project, then, should be understood as an endeavor to bring this direct, if tacit, knowledge to conscious awareness:

Hayek's political philosophy should be read as an eloquent speech . . . (that is, . . . speech that comprehends the whole of the topic at hand and . . . which raises to awareness the whole of the tacit dimension) . . . in the modern liberal tradition addressed to participants who have . . . experienced the fruits of liberal regimes . . . Participants do not seek to "justify" liberal regimes. They have lived through and found them to be good. They know this through participation not through speculation . . . Hayek, unlike most liberal theorists, never tries to justify liberal practice . . . *His political philosophy is a speech telling us what liberty is and reminding us of who we are . . .*³⁶¹

Liberal values and principles cannot be rationally justified or conclusively demonstrated to be superior to non-liberal values and institutions. Nevertheless, Hayek observes, we preserve our culture and civilization by treating them as if they are in fact superior to all others.

In this regard, Gray may be correct that Hayek's argument "can have no justificatory force for anyone who is not already in some measure attached to the . . . historically specific political tradition"³⁶² Hayek defends. Hayek would have no quarrel

³⁶¹Livingstone, 174-75.

³⁶²Gray, *Liberalisms*, 100.

with that. Is it really true, however, that "no sort of reasoning can bring about unity among exponents of rival political and moral traditions,"³⁶³ that Hayek only speaks to those already committed to his version of liberalism? Hayek himself believed otherwise. For Hayek, the skeptical "anti-rationalist," had more faith in reason than implied by such a pessimistic pronouncement.

³⁶³Ibid.

APPENDIX A

ON THE DISTINCTION BETWEEN A SPONTANEOUS ORDER AND AN ORGANIZATION

Liberal Society is a Spontaneous Order

According to Hayek, Western liberal society is the unintended outcome of the widespread observance of certain nonrational traditions—certain rules, practices, and values which were not observed because anyone foresaw the consequences that would ensue, but which prevailed because those groups who observed them unwittingly generated a superior overall order³⁶⁴ of activities that enabled them to proliferate and flourish. Once this order had come into existence, however, it was possible retrospectively to investigate its structure and principles of operation. The result of these investigations was the formulation of what Hayek terms the theory of spontaneous order.

A *spontaneous order* is a self-generating or self-maintaining order, an abstract pattern (system, structure) of stable and predictable relations³⁶⁵ which emerges as an unintended consequence of the regularity or rule-governed behavior of the individual elements that form the abstract order.³⁶⁶

³⁶⁴Hayek defines the concept of order as "a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations concerning the rest, or at least expectations which have a good chance of proving correct." *Rules and Order*, 36.

The order that emerges from the observance of certain rules and values, while an unintended result of that observance, must be distinguished from it. "Only when it is clearly recognized that the order of actions is a factual state of affairs distinct from the rules which contribute to its formation can it be understood that such an *abstract order can be the aim of the rules of conduct*." *Ibid*, 113-114.

³⁶⁵Those "relations" that structure a spontaneous *social* order include such abstract social relations as buyer and seller; lessor and lessee; lender and borrower; producer and consumer; judge and litigant, and so on.

³⁶⁶*Ibid*, 35-40.

An example of a spontaneous ordering process that operates in the material realm may assist our understanding of how such forces behave in the social realm. In order to induce the formation of a crystal, one must create the conditions under which the individual elements will so arrange themselves that the overall structure of a crystal will emerge. One cannot deliberately arrange the several elements to produce the desired formation. Under appropriate conditions, however, each rule-governed element, adapting itself to its initial position and particular circumstances, will so arrange itself as to result in the formation of the relatively more complex structure.³⁶⁷

Liberal society, according to Hayek, is such a spontaneous order.³⁶⁸ Its character may be seen more clearly in contrast to a second type of social order found within modern society—a "made" order or organization.³⁶⁹ An organization is an order created by the *deliberate arrangement* of the several elements according to the conscious intention of a designing mind. An example from the physical world would be the construction of a watch or a computer micro-chip wherein each component is deliberately positioned in accordance with the maker's knowledge and purpose.

³⁶⁷*Ibid*, 39-40.

³⁶⁸ The order to which Hayekian theory refers manifests itself in the matching or coincidence of plans and expectations across persons who are necessarily ignorant of most of the concrete circumstances prevailing throughout society and of the concrete aims pursued by their (mostly unknown) fellows. "The order of society . . . must be defined as a condition in which individuals are able, on the basis of their own respective peculiar knowledge, to form expectations concerning the conduct of others, which are proved correct by making possible a successful mutual adjustment of the actions of these individuals." "The Errors of Constructivism," *New Studies*, 9.

The existence of such order is what accounts for the fact that the means we require to realize both our transitory ends and enduring values are made available by strangers who have no explicit knowledge of our concrete needs and wants. It is what allows the activities of millions of person who do not and cannot know one another's concrete circumstances and intentions to "dovetail" or mesh rather than clash or conflict, and this despite the fact that most persons are only tacitly aware of its existence and do not deliberately aim to produce it.

³⁶⁹*ibid*, 37.

An organization, then, is an order that is constructed by someone putting the elements of a set in their places or directing their movements and which is designed to fulfill the maker's particular purpose. The technique of organization is, of course, indispensable for achieving various known purposes. The purpose-independent spontaneous order³⁷⁰ of liberal society is composed, in fact, of both individuals and organizations—business corporations, governmental institutions, and voluntary associations of all kinds—that have been deliberately created to pursue particular ends.³⁷¹ The coordination of the activities among the individuals and organizations within society, however, is accomplished through the spontaneous ordering process that is the "market."

A spontaneous order and an organization may be further distinguished by the type of rules or laws that necessarily prevail in either order: 1) the *nomos* (*the law* or private law), the evolved rules of justice that serve to form and maintain the spontaneous order of liberal society; and 2) the *thesis* ("set-law": commands or *public law*), the deliberately constructed rules that govern organizational structures (and, in particular, the organization of government) (see Appendix B for a fuller discussion of these types of rules).³⁷² Hayek's argument is that the operation of the spontaneous order that is modern liberal society depends crucially upon the observance of *certain kinds of rules*—the *nomos* mentioned above— for only such abstract general rules induce and maintain that kind of complex social order.³⁷³

³⁷⁰"Because the order of liberal society is not a purposive construction, it will not serve any specific purpose but will facilitate the achievement of human purposes in general." Gray, *Hayek on Liberty*, 35.

³⁷¹*Rules and Order*, 46-47.

³⁷²*Ibid*, 48-49.

³⁷³*Ibid*, 43-44.

There are two fundamental differences between a spontaneous order and an organization. First, only a spontaneous order allows for the harmonious co-existence of a multiplicity of particular ends and ultimate values within society; organizations, as noted, are designed to serve a unitary hierarchy of ends established by the director(s). Furthermore, every organization is designed to achieve a specific pre-determined purpose; a spontaneous social order, on the other hand, possesses no particular purpose but merely allows for the possible fulfillment of the various and perhaps conflicting purposes of the several individuals and organizations that compose the order.³⁷⁴

The second important distinction concerns the amount and kind of knowledge that can be utilized in either order and thus the degree of complexity either can attain. A spontaneous order effectively co-ordinates and utilizes the knowledge, both explicit and tacit, that only exists dispersed and fragmented among the millions of persons within a Great Society. Spontaneous ordering processes thus allow the formation of a highly complex extended order which utilizes knowledge unknown in its totality to any one mind or group of minds. Such an order emerges as the joint product of the combined and interacting knowledge possessed by the individual elements and may, therefore, grow to a degree of complexity unfathomable to any one mind. An organization, on the other hand, must remain a relatively primitive structure because the knowledge utilized within such an order is necessarily limited to the knowledge possessed by the designer(s). Its degree of complexity, in other words, is limited to the extent that reliance on specific commands prevents the individual elements from acting upon their own particular knowledge.

The more complex the order aimed at, then, the greater reliance must be placed on general rules rather than specific commands or positive prescriptions because most of the

³⁷⁴*Ibid*, 39.

several actions in a complex extended order will have to be determined by knowledge and circumstances known only (and perhaps only tacitly) to the acting persons. Hayek reminds us that it is only because modern society grew up as a spontaneous order and not as an organization that it has attained the degree of complexity it has:

To maintain that we must deliberately plan modern society because it has become so complex is therefore paradoxical, and a result of a complete misunderstanding of the circumstances. The fact is, rather, that we can preserve an order of such complexity not by the method of directing the members but only indirectly by enforcing and improving the rules conducive to the formation of a spontaneous order.³⁷⁵

³⁷⁵*Ibid*, 50-51.

APPENDIX B

THE ATTRIBUTES AND SOURCE OF LAW

The Attributes of Law

One of Hayek's fundamental contentions is that the law whose observance generated modern liberal society—law which was "discovered" through the law-finding process described in chapter two—will necessarily possess certain attributes.³⁷⁶ He further contends that all law (and legislation³⁷⁷) enforced by government in a liberal order should possess those same attributes, for not all types of rules are compatible with the operation of complex social formations such as liberal society.

According to Hayek, two conceptually and functionally distinct kinds of legal rules prevail in modern liberal society: 1) the *nomos* (*the law* or private law);³⁷⁸ and 2) the *thesis* ("set law," commands, or *public law*).³⁷⁹ Only the former of these types of rules is considered by Hayek to be valid *law*, the evolved rules of conduct that define justice and secure order. The latter consists of the consciously designed rules that govern and structure the organization of government proper—rules, commands, and positive prescriptions designed to realize particular purposes determined by the director(s) of the

³⁷⁶This is because judges necessarily search for the general principle implicitly governing each particular dispute brought before them—for the principle that coheres with the overall body of historically evolved rules. Moreover, as we have discussed, Hayek maintains that the gradual extension of a uniform legal code over an extended spatial area necessitated the gradual attenuation of specific positive obligations and resulted in the abstract, negative rules that, according to Hayek, induced and maintain the abstract spontaneous order of liberal society. *Rules and Order*, 85-88.

³⁷⁷For Hayek, law and legislation (the deliberate construction of rules) are distinct entities. Moreover, legislation will only possess the attributes of valid law if it is consciously modeled on it.

³⁷⁸*Rules and Order*, 94-123.

³⁷⁹*Ibid*, 124-144.

governmental organization. The distinction between private and public law is one between standing general rules that all must obey and specific orders to be "executed" by government officials. One cannot, of course, "execute" or "carry out" a rule of conduct.³⁸⁰

As we mentioned, *the law*—the spontaneously evolved rules that generated the formation and maintenance of the liberal order—possesses specific attributes that differentiate it from the rules of organization.³⁸¹ According to Hayek, the legal framework requisite to the operation of the liberal order consists of purpose-independent abstract rules of just conduct, universally applicable to all persons. These rules generally take the form of negative prohibitions that delimit a private sphere within which individuals are guaranteed a free range of action protected from the arbitrary interference of others.³⁸²

³⁸⁰*Ibid*, 127.

³⁸¹ According to Hayek, the *nomos* or *the law* that governs the spontaneous order of liberal society exhibits the following properties:

1. Each *law* is an abstract (general) rule intended to apply to unknown persons in an unforeseeable number of future circumstances;
2. It is known, certain, and, in intention, perpetual;
3. It is the same for all persons (the ideal of "equality under the law");
4. It generally takes the form of a negative prohibition delimiting the boundary or protected domain ("property") of each person;
5. It serves to regulate the relations between private persons or between such persons and the government;
6. It is part of a system of "mutually modifying rules"; and
7. It possesses no specific purpose except the "purpose" of the system of rules as a whole (that is, to maintain the overall social order). *Constitution*, 205-212.

³⁸²"There can be no law in the sense of universal rules of conduct which does not determine boundaries of the domains of freedom by laying down rules that enable each to ascertain where he is free to act This was long regarded as self-evident and needing no proof [A]ll that we call civilization has grown up on the basis of that spontaneous order of actions which is made possible by the delimitation of protected domains of individuals or groups" *Rules and Order*, 107-08.

The function of *the law* is to create a secure and stable framework of expectations so that persons may know which features of their environment they may count on in making their plans. It thus aims at reducing conflict, establishing certainty, and allowing for the smoothest possible mutual co-ordination of activities. Furthermore, one should note that this method of social co-ordination allows for the fullest use of dispersed knowledge: although each person must take the general rule into account in pursuing his own ends, he is free to act upon his particular knowledge, bound only by general negative prohibitions.

The Rules of Organization

According to Hayek, the rules required for the effective functioning of an organization are conceptually and functionally distinct from those required for the operation of a spontaneous order. The activities of the individuals and organizations within a spontaneous order are co-ordinated by the observance of purpose-independent abstract rules (*the law*); within an organization, by contrast, activities are co-ordinated by direct commands and end-dependent rules that serve known goals determined by the director(s) of the organization.

The most important distinction between *laws* and commands is the "manner in which the aims and knowledge that guide a particular action are distributed between the authority and the performer."³⁸³ In other words, as we move from commands to law, the source of the decision about what action is to be taken moves from the issuer to the acting person. An ideal *law* is a general abstract rule that limits the means persons may use in pursuing their ends but does not in itself prescribe any positive end; an ideal

³⁸³*Constitution*, 150.

command, on the other hand, is a specific order to do a particular thing, prescribing both the means to be used and the end to be achieved. An ideal command thus serves only the commander's end and uses only his knowledge; an ideal law, by contrast, merely provides information which the acting person must take into account but leaves the decision as to which ends to pursue and what knowledge to utilize to the acting person.

A pure organization, that is, an order produced solely by means of direct commands to the individual elements, must remain a relatively elementary structure because the only knowledge utilized in such an order is that of the commanding director(s). Even organizations, then, must rely on general rules to some extent because the director(s) of all but the most simple organizations will desire the individual members to make use of knowledge the director himself does not possess. The *teleocratic*³⁸⁴ rules that govern action within an organization, however, are functionally distinct from the *nomocratic*³⁸⁵ rules that serve a spontaneous order in that they must be rules for the performance of tasks which have been deliberately assigned.³⁸⁶ The rules of organization of government that comprise the public law, for example, will typically specify the function and tasks of each individual element within the organization and establish various rules which those who hold the different positions must follow. There may, then, exist general rules as well as specific commands within an organization; the rules of organization, however, in contrast to the rules that structure a spontaneous order, are end-dependent and merely "fill . . . in the gaps left by the commands."³⁸⁷

³⁸⁴*Mirage*, 15.

³⁸⁵*Ibid.*

³⁸⁶*Rules and Order*, 49.

³⁸⁷*Ibid.*

The Source of Law

The defining attributes of law did not, of course, emerge full blown from Hayek's or anyone else's head; rather, "mankind has learned from long and painful experience that the law of liberty must possess certain attributes."³⁸⁸ More specifically, Hayek claims that these attributes have been identified in two ways: first, by retrospectively examining the attributes of the law that in fact emerged throughout the historical evolution of Western liberal societies, particularly those with a strong tradition of "law-finding" by judges or trained jurists. As we have discussed, what such persons were "finding" were those rules implicitly governing spontaneous interactions within a given community, rules which referred to a working order of actions which no one had designed and which no one had the authority or ability to alter at will; and, second, by the scientific investigation of the nature and operation of complex social formations such as the liberal order. Hayek, we should note, claims scientific status for the theory of spontaneous order; he suggests, moreover, that the most important knowledge science has to offer political theory is the explanation of the "role of law in an ordering mechanism."³⁸⁹ As we noted earlier, classical liberalism, to Hayek's mind, "derives" from the discovery of an undesigned order in social affairs.

Hayek denies, then, that the legal framework that generated and sustains the liberal order is a product of rational construction or an object of political determination. It is, on his view, an outcome of a transpersonal evolutionary process whereby those rules that secured the overall order and best contributed to human survival and flourishing were selected and transmitted over time. Members of liberal society must, he argues, observe

³⁸⁸*Constitution*, 205.

³⁸⁹*Rule and Order*, 71.

certain rules despite the facts that they have not been deliberately "chosen"³⁹⁰ and that their significance may not be fully transparent to the reasoning mind.³⁹¹

Moreover, Hayek does not believe the rules of justice are determined by reaching "consensus" among rational men,³⁹² but by the rationale and requirements of the "system as a whole."³⁹³ The development of law is, Hayek argues, a pointed intellectual task—the lawfinder must discover the rules that cohere with the overall body of accepted rules that governs a working social order. As such, it must be undertaken by persons well versed in both jurisprudence and social theory as well as intimately acquainted with the "tacit dimension" of their society. The "correct" rules are, in a sense, determined—determined by the requirements of the "existing factual order,"³⁹⁴ the unintended yet objective consequence of the observance of an established body of rules

³⁹⁰"Man has chosen [the liberal market order] only in the sense that he has learned to prefer something that already operated; and through greater understanding has been able to improve the conditions for its operation." "Ludwig von Mises," *Fortunes*, 142.

³⁹¹Why should factually unequal persons be subject to the same law? Why should property and contract be protected? The reasons for our laws, of course, are often not obvious.

³⁹²Which is not to say that discussion may not facilitate the task of discovering the right rules. The growth of knowledge always depends on the interplay of many minds. The development of law, like the development of scientific or any other knowledge, proceeds by a trial-and-error process of elimination (of wrong or unjust rules and refuted hypotheses, respectively). Any judge may err or fail in the endeavor to find or articulate the correct rule, and the opinions of peers and critics are indispensable. Moreover, the judge must be able "rationally to defend [his particular decisions] against all objections that can be raised against [them]" (*Rules and Order*, 120). This is a different process, however, from that advocated by adherents to the "rational dialogue" school of thought. As little as the rules of grammar are determined by "rational consensus" are the rules of law.

³⁹³*Rules and Order*, 101; 113-114.

³⁹⁴"The Errors of Constructivism," *New Studies*, 21.

and values.³⁹⁵ For Hayek, the task of the judge is to "maintain . . . and improve a going order of actions, and [he] must take his standards from that order. . . ." ³⁹⁶

Such "determinism" only applies, however, if we wish to live in a liberal society. A liberal society is indeed a constrained society; once we have committed ourselves to its preservation, the rules we may adopt are severely circumscribed. Hayek does not, of course, deny that we are "able" rationally to construct rules that appear to satisfy demands of reason, justice, equity, desire, or whatever. What he denies is that such constructed rules can maintain the character of liberal society or provide the basis for a viable, let alone vibrant, social order.

³⁹⁵*Ibid.*

³⁹⁶*Rules and Order*, 120.

APPENDIX C

CONSTRUCTIVIST AND CRITICAL RATIONALISTS³⁹⁷

*Men Identified as
Constructivist
Rationalists*

John Austin
Francis Bacon
Beccaria
Bentham
G. B. Chisholm
Auguste Comte
Descartes
Hegel
Helvetius
Alexander Herzen
Thomas Hobbes
L. T. Hobhouse
Hans Kelsen
Karl Marx
G. E. Moore
Plato
Hans Reichenbach
Rousseau
Torgny T. Segerstedt
B. F. Skinner
Voltaire

*Men Identified as
Critical Rationalists*

Lord Acton
St. Thomas Aquinas
Aristotle
Edmund Burke
Adam Ferguson
W. E. Gladstone
David Hume
Bernard Mandeville
Carl Menger
Montesquieu
Karl R. Popper
Adam Smith
Alexis de Tocqueville
Josiah Tucker
Giamattista Vico

*Men Identified as
in the Middle*

Humboldt
Immanuel Kant
John Locke
John Stuart Mill
Herbert Spencer

³⁹⁷Source: Arthur M. Diamond, Jr. "F. A. Hayek on Constructivism and Ethics," John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments*, Volume III (New York: Routledge, Chapman and Hall, Inc., 1991), 242-43.

WORKS CONSULTED

R. A. Arnold, "Hayek and Institutional Reform," *John Cunningham Wood and Ronald N. Woods, eds, Friedrich A. Hayek: Critical Assessments*, Volume III (New York: Routledge, Chapman and Hall, Inc., 1991).

Norman P. Barry, *Hayek's Social and Economic Philosophy* (London: The Macmillan Press, Ltd., 1982).

"Hayek on Liberty," Zbigniew Pelczynski and John Gray, eds, *Conceptions of Liberty in Political Philosophy* (New York: St. Martin's Press, 1984).

"The Liberal Constitution: Rational Design or Evolution?" *Critical Review* (Spring 1989): 267-282.

Robert N. Bellah *et al*,

Habits of the Heart: Individualism and Commitment in American Life (Berkeley: University of California Press, 1985).

The Good Society (New York: Alfred A. Knopf, 1992).

Anthony de Crespigny and Kenneth Minogue, eds, *Contemporary Political Philosophers* (New York: Dodd, Mead & Co., 1975).

Brian Lee Crowley, *The Self, the Individual, and the Community: Liberalism in the Thought of F. A. Hayek and Sidney and Beatrice Webb* (Oxford: Clarendon Press, 1987).

Robert L. Cunningham, ed, *Liberty and the Rule of Law* (College Station, TX: Texas A&M University Press, 1979).

Fred R. Dallmayr, ed, *From Contract to Community: Political Theory at the Crossroads* (New York: Marcel Dekker, Inc., 1978).

Arthur M. Diamond, "F. A. Hayek on Constructivism and Ethics," John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments*, Volume III (New York: Routledge, Chapman and Hall, Inc., 1991), 239-253.

Gottfried Dietze, *Liberalism Proper and Proper Liberalism* (Baltimore: The Johns Hopkins University Press, 1985).

Laurent Dobuzinskis, "The Complexities of Spontaneous Order," *Critical Review* (Spring 1989): 241-266.

Gerald F. Gaus, *The Modern Liberal Theory of Man* (New York: St. Martin's Press, 1983).

John Gray,

Hayek on Liberty (Oxford: Basil Blackwell, 1984).

Liberalisms (New York: Routledge, 1989).

Postliberalism (Oxford: Basil Blackwell, 1993).

Joseph R. Gusfield, *Community: A Critical Response* (New York: Harper & Row, 1975).

Amy Gutmann, "Communitarian Critics of Liberalism," *Philosophy and Public Affairs* (Summer 1985): 308-322.

Friedrich A. Hayek,

Individualism and Economic Order (Chicago: The University of Chicago Press, 1948).

The Sensory Order (Chicago: The University of Chicago Press, 1952).

The Counter-Revolution of Science: Studies on the Abuse of Reason (London: The Free Press of Glencoe, 1955).

The Constitution of Liberty (Chicago: The University of Chicago Press, 1960).

Studies in Philosophy, Politics, and Economics (Chicago: The University of Chicago Press, 1967).

Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy

Volume One: *Rules and Order* (Chicago: The University of Chicago Press, 1973).

Volume Two: *The Mirage of Social Justice* (Chicago: The University of Chicago Press, 1976).

Volume Three: *The Political Order of a Free People* (Chicago: The University of Chicago Press, 1979).

New Studies in Philosophy, Politics, Economics, and the History of Ideas (Chicago: The University of Chicago Press, 1978).

The Fatal Conceit (Chicago: The University of Chicago Press, 1988).

Allan C. Hutchinson and Leslie J. M. Green, eds, *Law and the Community: The End of Individualism?* (Toronto: Carswell, 1989).

- Kirk F. Koerner, *Liberalism and Its Critics* (New York: St. Martin's Press, 1985).
- Chandran Kukathas, *Hayek and Modern Liberalism* (Oxford: Clarendon Press, 1989).
- Will Kymlicka, *Liberalism, Community, and Culture* (Oxford, Clarendon Press, 1989).
- D. Lavoie, "The Market as a Method for Discovery and Conveyance of Inarticulate Knowledge," John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments*, Volume IV (New York: Routledge, Chapman and Hall, Inc., 1991).
- David Levy, "Liberalism, Politics and Anti-Politics," *Critical Review* (Spring 1989): 336-47.
- Donald W. Livingstone, "Hayek as Humean," *Critical Review* (Spring 1991): 159-177.
- Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990).
- Fritz Machlup, ed, *Essays on Hayek* (New York: New York University Press, 1976).
- Alasdair MacIntyre
- After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 1984).
- Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988).
- G. B. Madison, "Hayek and the Interpretive Turn," *Critical Review* (Spring 1989): 169-185.
- Kenneth R. Minogue, *The Liberal Mind* (New York: Vintage Books, 1968).
- Stephen L. Newman, *Liberalism at Wit's End: The Libertarian Revolt Against the Modern State* (Ithaca: Cornell University Press, 1984).
- Robert A. Nisbet, *The Quest for Community* (New York: Oxford University Press, 1953).
- Ralph V. Norman and Charles H. Reynolds, eds, *Community in America: The Challenge of Habits of the Heart* (Berkeley: University of California Press, 1988).
- Michael Oakeshott, *Rationalism in Politics and Other Essays* (New York: Basic Books, 1962).
- Robert Ornstein, *The Evolution of Consciousness* (New York: Prentice Hall Press, 1991).
- William Aylott Orton, *The Liberal Tradition: A Study of the Social and Spiritual Conditions of Freedom* (New Haven: Yale University Press, 1945).

Zbigniew Pelczynski and John Gray, eds, *Conceptions of Liberty in Political Philosophy* (New York: St. Martin's Press, 1984).

Marcus G. Raskin, *The Common Good: Its Politics, Policies and Philosophy* (New York: Routledge & Kegan Paul, 1986).

John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971).

Lord Robbins, "Hayek on Liberty," John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments*, Volume II (New York: Routledge, Chapman and Hall, Inc., 1991).

Richard Rorty, *Contingency, Irony, and Solidarity* (New York: Cambridge University Press, 1989).

Nancy L. Rosenblum, *Another Liberalism* (Cambridge, MA: Harvard University Press, 1987).

Claes G. Ryn, *Will, Imagination, and Reason* (Washington, D.C.: National Humanities Institute, 1986).

Michael J. Sandel,

Liberalism and the Limits of Justice (New York: Cambridge University Press, 1982).

ed, *Liberalism and Its Critics* (New York: New York University Press, 1984).

"The Procedural Republic and the Unencumbered Self," *Political Theory* (February 1984): 81-96.

Thomas A. Spragens, Jr.

The Irony of Liberal Reason (Chicago: The University of Chicago Press, 1981).

Reason and Democracy (Durham, NC: Duke University Press, 1990).

Charles Taylor,

Philosophy and the Human Sciences: Philosophical Papers 2 (Cambridge: Cambridge University Press, 1985).

Sources of the Self: The Making of Modern Identity (Cambridge: Harvard University Press, 1989).

"The Politics of Recognition," *Multiculturalism and "The Politics of Recognition"* (Princeton: Princeton University Press, 1992).

Roberto M. Unger, *Knowledge and Politics* (New York: The Free Press, 1975).

Conrad P. Waligorski, *The Political Theory of Conservative Economists* (Lawrence: University Press of Kansas, 1990).

Graham Walker, *The Ethics of F. A. Hayek* (Lanham, MD: University Press of America, 1986).

Robert Paul Wolff, *The Poverty of Liberalism* (Boston: Beacon Press, 1968).

John Cunningham Wood and Ronald N. Woods, eds, *Friedrich A. Hayek: Critical Assessments, Volumes I-IV* (New York: Routledge, Chapman and Hall, Inc., 1991).

Leland B. Yeager, "Reason and Cultural Evolution," *Critical Review* (Spring 1989): 324-335.

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